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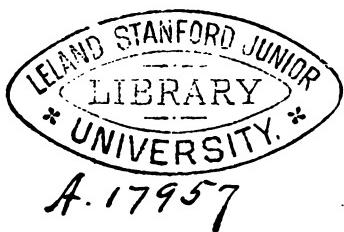
**THE
REPUDIATION OF STATE DEBTS
A STUDY
IN THE FINANCIAL HISTORY
OF**

**MISSISSIPPI, FLORIDA, ALABAMA, NORTH CAROLINA, SOUTH
CAROLINA, GEORGIA, LOUISIANA, ARKANSAS,
TENNESSEE, KANSAS, TA. MEXICO,
CAN. AND VIRGINIA.**

BY

**WILLIAM A. SCOTT, PH.D.,
ASSISTANT PROFESSOR OF POLITICAL ECONOMY IN THE UNIVERSITY
OF WISCONSIN.**

**NEW YORK: 46 EAST FOURTEENTH STREET.
THOMAS Y. CROWELL & CO.
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**THE
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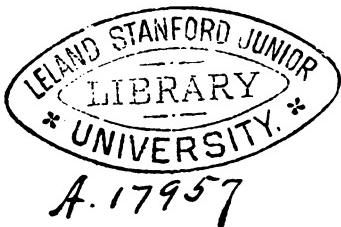
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leads to the conclusion that the holder of a repudiated bond has no efficient means for enforcing the payment of his dues; Chapters II. to VI., inclusive, describe with considerable detail the history of the various acts of repudiation passed by the twelve States named on the title-page; Chapter VII. attempts a scientific interpretation and explanation of the facts presented; and the closing chapter contains a critical discussion of various remedies for the evil of State defalcation and financial dishonesty.

The term repudiation as herein employed includes cases of the "scaling" of debts and of refusal to pay bonds which were not valid obligations of the States, either from a moral or a legal standpoint. It may perhaps be objected that such an extension of the term is not justified by ordinary usage; and that the compromise of a debt on terms which reduce the principal and interest, or the refusal to pay bonds which are *claimed* to represent a just debt but *do not*, cannot in justice be termed repudiation. Though the author has no desire to attempt to justify so broad an extension of the meaning of the term on grounds of derivation or usage, it has seemed to him proper to use it on the title-page and elsewhere as generally and

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I.

THE CONSTITUTIONAL AND LEGAL ASPECTS OF REPUDIATION.

REPUDIATION OF STATE DEBTS.

CHAPTER I.

THE CONSTITUTIONAL AND LEGAL ASPECTS OF REPUDIATION.

THE study of the chapter of financial history which constitutes the subject of this book, properly begins with an investigation into the rights and privileges of the States of the American Union relative to the payment or non-payment of their debts. We naturally ask at the very outset whether repudiation is in any way connected with the defects in our constitutional and legal system, or whether it has happened in spite of the best possible laws.

The Federal Constitution and the laws of the States themselves are the sources whence an answer to these questions must be derived. We will begin with the former.

As originally adopted, the Constitution of the United States contained two provisions which have

a bearing on this subject. One, in Section 10 of Article I., prohibits a State from passing any law "impairing the obligation of contracts," and the other, in Section 2, Article III., provides that the judicial power of the United States shall extend "to controversies between two or more States; between a State and citizens of another State; between citizens of different States; between citizens of the same State claiming lands under grants of different States; and between a State or the citizens thereof and foreign States, citizens, or subjects."

The meaning of these two clauses in the present connection at first sight seems clear. The casual reader, uninitiated in the technicalities of the law, would affirm unhesitatingly that the first one made it unlawful for a State to repudiate her just debts, and that the second one provided that in case she did thus incriminate herself, she could be brought to justice before the federal courts. However, a more careful examination of the precise language used in the "contract clause," as the first one is called, reveals several difficulties. In the first place, it does not expressly state whether the contracts referred to are those of private individuals, of States, or of both. The natural inference is that it refers to all contracts by whomsoever made; but the "natural inference" is not always the one which interested parties draw. The next query concerns the meaning of the expression the "obli-

gation of contracts." What is the obligation of a contract? This being explained, we ask in the third place, in what ways can the obligation of a contract be violated? These difficulties must be removed before we can be sure of the precise bearing of the clause in question on the subject under discussion.

Regarding the kinds of contracts referred to,—whether State or individual, or both,—the decisions of the Supreme Court leave no room for doubt. They are unanimous in the declaration that the clause includes cases to which a State is a party. The following are examples of these decisions: In the case of the State of New Jersey *v.* Wilson¹ the statement is made that the contract clause of the Constitution "extends to contracts to which a State is a party as well as to contracts between individuals." In Providence Bank *v.* Billings² these words are used: It has "been settled that a contract entered into between a State and an individual is as fully protected by the tenth section of the first article of the Constitution as a contract between two individuals." The decision in the case of Green *v.* Biddle³ states that "the Constitution of the United States embraces all contracts, executed or executory, whether between individuals, or between a State and individuals; and that a State has no more power to impair an obli-

¹ 7 Cranch. 164, 166, ² 4 Put. 514, 560, ³ 8 Wheat. 1, 84.

gation into which she herself has entered than she can the contracts of individuals." These and other decisions¹ which might be quoted leave no doubt concerning the constitutional limitation of the right of States to impair contracts into which they have entered.

The meaning of the phrase "obligation of contracts" is settled by the following declarations of the Supreme Court: "The obligation of a contract consists in its binding force on the party who makes it. This depends on the laws in existence when it is made; these are necessarily referred to in all contracts, and form a part of them as the measure of the obligation to perform them by the one party, and the right acquired by the other."² Again it says: "The obligation of a contract, in the constitutional sense, is the means provided by law by which it can be enforced, by which the parties can be obliged to perform it."³

These decisions clearly indicate that the value of the contract clause depends upon other laws; namely, those which provide for the enforcement of contracts. If a State owes a debt, her obligation seems to depend entirely upon the laws in existence for the enforcement of contracts against States. If there are no such laws, the contract,

¹ *Woodruff v. Trapnall*, 10 How. 190, 207; and *Wolf v. New Orleans*, 103 U. S. 358, 367.

² *McCracken v. Hayward*, 2 How. 608, 612.

³ *Louisiana v. New Orleans*, 102 U. S. 203, 206.

though legal, is really worthless if the State sees fit to disregard its provisions.

An additional light is thrown upon the meaning and significance of the clause in question by the decisions of the Supreme Court, which define the various methods by which it may be violated. It has been well established by the precedents of this court that a State may change her remedy for enforcing contracts, provided she furnishes in the new as efficient a one as the old.¹ There is surely nothing in the contract clause itself which could prevent this. It simply insists that a change of remedy shall not impair the contract. In actual practice, however, it has been very difficult to draw closely the line between those changes of remedy which impair contracts and those which do not. The Supreme Court has recognized this difficulty, and in the main has succeeded in protecting the right of contracting parties to as efficient a remedy as existed when the contract was made. The following quotation will indicate the practice of the Supreme Court on this point. In the case of *Bronson v. Kinzie*,² Chief Justice Taney said: "It is manifest that the obligation of a contract, and the rights of a party under it, may in effect be destroyed by denying a remedy altogether, or may be seriously

¹ *Antoni v. Greenhow*, 107 U. S. 769; *Mason v. Haile*, 12 Wheat. 370; *Bronson v. Kinzie*, 1 How. 311; *Van Hoffman v. City of Quincy*, 4 Wall. 535; *Louisiana v. Pilsbury*, 105 U. S. 278.

² See above.

impaired by burdening the proceedings with new conditions and restrictions, so as to make the remedy hardly worth pursuing. And no one, we presume, would say that there is any substantial difference between a retrospective law declaring a particular contract or class of contracts to be abrogated and void, and one which took away all remedy to enforce them, or encumbered it with conditions that rendered it useless or impracticable to pursue it. One of the tests that a contract has been impaired is that its value has by legislation been diminished. It is not by the Constitution to be impaired at all. This is not a question of degree or manner or cause, but of encroaching in any respect on its obligation, dispensing with any part of its force."¹

The intent of the Court to preserve the clause with all its force was well expressed by Justice Strong in *Murray v. Charleston*,² when he said : "It is one of the highest duties of this Court to take care that the prohibition (against impairment of contracts) shall neither be invaded nor frittered away. Complete effect must be given to it in all its spirit." In spite of these strong statements, however, in one important case in which a State attempted to evade her obligations by changing the remedy for their enforcement, the Court gave so loose and broad an interpretation to this right

¹ 6 How. 301, 327.

² 96 U. S. 432, 438.

that the State was able to accomplish her purpose.¹

In view of these decisions of the Supreme Court, there can be no doubt concerning the meaning of the clause in question. It certainly refers to the contracts of States as well as to those of individuals, and it lays upon the former a strong moral obligation to pay their just debts. By itself, however, the clause is nothing more than a statement of what ought not to be done. It provides no means of preventing the repudiation of debts, and even when such means are nominally provided by statute, the decision of the Supreme Court to the effect that a remedy may be changed, provided in so doing the contract be not impaired, may give rise to technicalities under cover of which a dishonest State may escape her just obligations.

At this point it becomes necessary to inquire concerning the remedies provided for the enforcement of the contracts of delinquent States. The ability of the defrauded creditor to obtain his rights depends entirely upon these. As we have seen, a State has no legal or moral right to refuse to pay her just debts; but the question of importance is, what can be done in case she does refuse.

The clause — quoted above from the Constitution as originally adopted — seemed to imply that a delinquent State could be brought before the bar of the Supreme Court under such circumstances. This

¹ See *Virginia Coupon Cases*, chap. 6, p. 186.

would certainly have been a first step towards an efficient remedy. But this interpretation of the clause was questioned even before the Constitution was adopted. A controversy on this very point was carried on in the States when this instrument was being discussed with a view to adoption. It was urged by many that it authorized any citizen of the United States to arraign any of the States except his own at the bar of the Supreme Court. Patrick Henry was a prominent representative of this party, and he said that the expression "controversies between a State and citizens of another State" applied to all controversies, whether the State were plaintiff or defendant. Opposed to him were such statesmen as Madison, Marshall, and Hamilton, who claimed that a State could not be sued without her consent, and that the clause in question applied only to the States as plaintiffs. The question in dispute did not come before the Supreme Court until 1793. In that year Georgia was arraigned by one Chisholm,¹ much to her embarrassment and disgust, and the Supreme Court decided that the case was proper and within its jurisdiction as defined by Section 2, Article III. of the Constitution. In other words, it supported the proposition that an individual could arraign a State before the bar of the Supreme Court.

This decision caused much excitement and discontent throughout the country. The legislature

¹ 2 Dallas, 419.

of Georgia was furious, and at once passed an act condemning to death "without benefit of clergy, any marshal of the United States, or other person, who should presume to serve any process against that State at the suit of an individual;" and when the State of Massachusetts was sued soon after, Governor Hancock convened the legislature, and that body resolved to take no notice of the suit. The substantial result of this decision was agitation for an amendment to the Constitution. The next session of Congress took the matter under consideration, and passed by a large majority what is now known as the eleventh amendment. The State legislatures without exception subsequently confirmed it. It provides that "the judicial power of the United States shall not be construed to extend to any suit in law or equity commenced or prosecuted against one of the United States by the citizens of another State, or by citizens or subjects of any foreign State." In speaking of this amendment in the case of *Florida v. Georgia*¹ Mr. Justice Campbell said: "Various attempts were made in both branches of Congress to limit the operation of the amendment, but without effect. It was accepted, without the alteration of a letter, by a vote of twenty-three to two in the Senate, and eighty-one to nine in the House of Representatives, and received the assent of the State legislatures. Georgia ratified the amendment as an

¹ 17 Howard, 520.

explanatory article, her legislature concurring therewith, deeming the same to be the only just and true construction of the judicial power by which the rights and dignity of the several States can be effectively secured. Thus the supreme constitutional jurisdiction of the United States, the concurrent action of Congress and the State legislatures, expressing a consent almost unanimous, corrected the opinion of the Supreme Court, and intercepted its final judgments in these cases by declaring that the Constitution should not be so construed as to allow them."

This amendment brings us back again to the original question,— What remedy has the holder of a repudiated bond against the State which is his debtor? If he cannot bring suit against her, what possible method remains by which he may enforce his rights? Practically, none. The Supreme Court, however, has made desperate efforts to provide one or more, and these must now be examined, although their real utility is exceedingly small. This court has decided, among other things, that the eleventh amendment applies only to cases brought by individuals against States, and not to cases brought by States against individuals. By virtue of this decision, the federal courts may serve as a shield for the protection of the individual when the State attempts to prosecute him unjustly, but it cannot help him when the State has already done him a wrong, and he seeks redress.

This point was elaborated by Chief Justice Marshall in the case of *Cohens v. Virginia*.¹ In this case the State sued Cohens for negotiating United States lottery tickets on the basis of a Virginia statute which forbade the sale of such tickets in the State. The State courts found him guilty, and fined him. The case was brought before the Supreme Court on a writ of error, and in arguing the writ it was claimed that cases between a State and one of her own citizens were never intended to be cognizable in the federal courts. In reply to this, Chief Justice Marshall said: "This is very true, so far as jurisdiction depends on the character of the parties; and the argument would have great force if urged to prove that this court could not establish the demand of a citizen upon the State; but it is not entitled to the same force when urged to prove that this court cannot inquire whether the Constitution or laws of the United States protect a citizen from prosecution instituted against him by a State." To establish the same point, the case is supposed of an export duty being levied by a State. "If a citizen should pay such a tax," said the Chief Justice, "and then sue the State for the recovery of his money, the federal courts could not protect him. But if he refused to pay the duty, and the State attempted to levy upon his property or entered upon judicial proceedings against him, the courts of the United States could

¹ 6 Wheat. 391.

restrain the State and shield the man from harm." In summing up his argument, Chief Justice Marshall said: "The amendment, therefore, extends to suits commenced or prosecuted by individuals, but not to those brought by States." Justice Matthews in the case of *Poindexter v. Greenhow*¹ concurred in this opinion in the following passage quoted from his decision: "This immunity from suit secured to the States is undoubtedly a part of the Constitution of equal authority with every other, but no greater, and to be construed and applied in harmony with all the provisions of that instrument. That immunity, however, does not exempt the State from the operation of the constitutional provision that no State shall pass any law impairing the obligation of contracts; for it has long been settled that contracts between a State and an individual are as fully protected by the Constitution as contracts between individuals. It is true that no remedy for a breach of its contract by a State by way of damages as compensation, or by means of process to compel its performance, is open, under the Constitution, in the courts of the United States by a direct suit against the State itself on the part of the injured party, being a citizen of another State, or a citizen or subject of a foreign State. But it is equally true that whenever in a controversy between parties to a suit, of which these courts have jurisdiction, the question

¹ 114 U. S. 286.

arises upon the validity of a law by a State impairing the obligation of its contract, the jurisdiction is not thereby ousted, but must be exercised with whatever legal consequences to the rights of the litigants may be the result of the determination."¹

In view of these decisions it cannot be doubted that States can be brought before the federal courts in suits which they themselves commence, but it is doubtful whether this fact is capable of bringing much consolation to holders of repudiated bonds. Only under exceptional circumstances can they find relief in this fact, for it is seldom that the repudiation of debts by a State compels her to bring suit against persons. Such a case,² however, occurred in Virginia. The State had made the coupons of her bonds receivable for taxes and other dues; and, after her repudiation, she refused to receive them, and levied upon the property of those who refused to pay after making a tender of their coupons. This was a case in point; and the Supreme Court declared that a tender of the coupons released the citizen from further obligation, and that the law forbidding the receipt of coupons for taxes was unconstitutional.

¹ See besides, in confirmation of this point, *Fletcher v. Peck*, 6 Cranch. 87; *New Jersey v. Wilson*, 7 Cranch. 164; *Green v. Bidle*, 8 Wheat. 1, 84; *Providence Bank v. Billings*, 4 Pet. 514; *Woodruff v. Trapnall*, 10 How. 190; *Wolff v. New Orleans*, 103 U.S. 358; *Jefferson Branch Bank v. Skelly*, 1 Black, 436.

² *Poindexter v. Greenhow*, 114 U. S. 270.

A second source of relief to individuals under certain circumstances is suggested in those passages of the decisions quoted which make it possible for the Supreme Court to decide upon the constitutionality of State laws which may be involved in suits which come under its jurisdiction. If a State law is once declared unconstitutional by the Supreme Court, it no longer possesses binding force, and cannot be referred to by courts in deciding cases, or be pleaded as protection by State officers whose acts may be called in question by injured persons. In the case of *Louisiana v. Pilsbury*,¹ it was held that the legislation of a State impairing the obligation of contracts made under her authority is null and void; and the courts, in enforcing the contracts, will pursue the same course and apply the same remedies as though such invalid legislation had never existed. This applies to laws embodied in State constitutions as well as to statute laws, for the Supreme Court has repeatedly held that the constitution of a State is a law within the meaning of the prohibition that no State shall pass a law impairing the obligation of contracts.² This provision, which may be regarded as a part of our constitutional law, has an important bearing

¹ 105 U. S. 278.

² See *Miss. & Mo. R.R. Co. v. McClure*, 10 Wall. 511; *Mechanics & Traders' Bank v. Thomas*, 18 How. 384; *White v. Hart*, 13 Wall. 646; *Detmas v. Merchants' Mut. Ins. Co.*, 14 Wall. 661; *Gunn v. Barry*, 15 Wall. 610; *Davis v. Gray*, 16 Wall. 203; *Fisk v. Police Jury*, 116 U. S. 131.

on the subject under discussion when considered in connection with the right of individuals to sue State officers in cases in which they could not sue the States directly. This right inheres in precisely those cases in which a State officer attempts to enforce an unconstitutional law. Such a law does not exist, according to the interpretation put upon the Constitution by the Supreme Court; and an officer who attempts to enforce it makes himself liable to the charge of misdemeanor, and may be prosecuted and punished.

It has been claimed¹ that in all cases in which the eleventh amendment prohibits a State from being made a party defendant to a suit, suit may be brought against the officers intrusted with the execution of the law; but it is hardly possible to support this claim with clear evidence drawn from the decisions of the Supreme Court. The cases usually referred to in support of this view do not authorize so broad a generalization. In the leading one, that of *Osborn v. United States Bank* (9 Wheat. 738), suit was brought to restrain the auditor of the State of Ohio from levying a tax upon the United States Bank in pursuance of a statute of the State ordering such a tax to be collected. It was claimed by the defendants that the case could not be entertained by the Supreme Court on account of the prohibition contained in

¹ D. H. Chamberlain on "The Constitutionality of Repudiation," in *North American Review* for March, 1884.

(See *Ex parte Bollman*, 16 Wall. 293) this
court will say the following words:—
That it is the duty of the United States in a
suit to recover damages from or join a State officer from
whom the plaintiff in *Ex parte Bollman* conflict with the Constitu-
tional rights of the United States, when such
officer has violated the rights of the complainant.
That as far as the State is concerned, the State
will be made a party if it could be done; that
it could not be done is a sufficient reason for the omis-
sion to do it, and the court may proceed to decree

the eleventh amendment. In answer to this the Court said: "The objection is that, as the real party cannot be brought before the Court, a suit cannot be sustained against the agents of that party; and cases have been cited to show that a Court of Chancery will not make a decree unless all those who are substantially interested be made parties to the suit. This is certainly true where it is in the power of the plaintiff to make them parties; but if the person who is the real principal, the person who is the true source of the mischief, by whose power and for whose advantage it is done, be himself above the law, be exempt from all judicial process, it would be subversive of the best established principles to say that the laws could not afford the same remedies against the agent employed in doing the wrong which they would afford against him could his principal be joined in the suit.

In the case of *Davis v. Gray* (16 Wall. 203) this decision was confirmed in the following words:—

"(1) A circuit court of the United States in a proper case in equity may enjoin a State officer from executing a State law in conflict with the Constitution or a statute of the United States, when such execution will violate the rights of the complainant.

"(2) Where the State is concerned, the State should be made a party if it could be done; that it cannot be done is a sufficient reason for the omission to do it, and the court may proceed to decree

against the officers of the State in all respects as if the State were a party to the record."

A second confirmation of this opinion was made in the case of *Board of Liquidation et al. v. McComb* (92 U. S. 531) in the following words : " On this branch of the subject the numerous and well-considered cases heretofore decided by this court leave little to be said. The objections to proceeding against State officers by *mandamus* or injunction are: first, that it is, in effect, proceeding against the State itself; and, secondly, that it interferes with the official discretion vested in the officers. It is conceded that neither of these things can be done. A State, without its consent, cannot be sued by an individual ; and a court cannot substitute its own discretion for that of executive officers in matters belonging to the proper jurisdiction of the latter. But it has been well settled that when a plain official duty, requiring no exercise of discretion, is to be performed, and performance is refused, any person who will sustain personal injury by such refusal may have a *mandamus* to compel its performance ; and when such duty is threatened to be violated by some positive official act, any person who will sustain personal injury thereby, for which adequate compensation cannot be had at law, may have an injunction to prevent it. In such cases the writs of *mandamus* and injunction are somewhat correlative to each other. In either case, if the officer plead the

authority of an unconstitutional law for the non-performance or violation of his duty, it will not prevent the issuing of the writ. An unconstitutional law will be treated by the courts as null and void."

That the Supreme Court did not intend in these cases to lay down the principle that State officers may be made parties defendant to a suit *in all cases* in which the State could not be sued is evident from the decision in the case of *Louisiana v. Jumel* (107 U. S. 711), in which the above-mentioned cases are reviewed, and the following statement subversive of the principle mentioned is made : "The remedy sought, in order to be complete, would require the court to assume all the executive authority of the State, so far as it related to the enforcement of this law, and to supervise the conduct of all persons charged with any official duty in respect to the levy, collection, and disbursement of the tax in question until the bonds, principal and interest, were paid in full, and that, too, in a proceeding in which the State, as a State, was not and could not be made a party. It needs no argument to show that the political power cannot be thus ousted of its jurisdiction, and the judiciary set in its place. When a State submits itself, without reservation, to the jurisdiction of the court in a particular case, that jurisdiction may be used to give full effect to what the State has, by its active submission, allowed to be done ; and if the

law permits coercion of the public officers to enforce any judgment that may be rendered, then such coercion may be employed for that purpose. But this is very far from authorizing the court, when a State cannot be sued, to set up its jurisdiction over the officers in charge of the public moneys, so as to control them, as against the political power in their administration of the finances of the State."

It is certainly impossible to draw any sharp line of distinction between State officers executing the laws and the State herself. The officers represent the State, and constitute the State for all practical purposes. But when a given enactment is unconstitutional, it is no more a law than if it had never been passed, and officers must regard it as null and void, any attempt on their part to enforce it falling in the same category as any other official act not warranted by law. This conclusion is the only one which is capable of harmonizing the Supreme Court decisions, and which is supported by reason. The eleventh amendment would be a dead letter if State officials could be sued in the federal courts in all cases in which the State herself would be the natural defendant; but no legal principle is violated if an official be sued for acts which the laws of his State or of the United States did not warrant him in performing.

From this decision it appears, then, that the barriers of the eleventh amendment have been pierced

at only two points: It does not prevent the federal courts from entertaining cases brought by States against individuals, and it does not prevent these courts from pronouncing an opinion concerning the constitutionality of State laws which may be involved in cases which come under their jurisdiction, and from thus restraining State officers from executing unconstitutional laws.

We are now prepared to answer the question suggested at the beginning of this chapter; namely, What protection is afforded the holder of a repudiated bond by the federal constitution? We have seen that the contract clause—which is plainly violated when a State passes a law repudiating a bond—is no protection unless an adequate remedy for its enforcement be provided. We have seen also that Section 2, Article III., of the Constitution was designed to afford such a remedy in its provision that States could be sued by individuals in the federal courts, but that this remedy was practically taken away by the eleventh amendment. Suits between two States may still be brought before the federal courts, and both New York¹ and New Hampshire attempted without avail to make use of these rights for the protection of bondholders who had been defrauded by State repudiation. When Louisiana passed her repudiation acts, both these States obtained possession of certain of the dishonored bonds of their citizens, and brought suit

¹ 108 U. S. 76.

against Louisiana in the Supreme Court. It was decided, however, that this was simply an attempt to evade the eleventh amendment, and consequently not permissible. There is, then, no remedy provided by the United States for the enforcement of the "contract clause" of which the holder of a repudiated bond can avail himself. Only in case the State makes her coupons receivable for taxes, or in some other exceptional way leaves the door open to individuals to enter suit against her, can she be prevented by the United States from repudiating all her debts, and inflicting upon individuals and the community at large all the evils which repudiation involves.

There still remain for us to consider in this chapter the remedies afforded by the States themselves in case of an attempted repudiation. It is, of course, entirely possible for a State to submit herself to those judicial processes to which persons are submitted. Just as a person may be brought before a court and fined, if he refuses to pay his honest debts, so a State may by law provide that she shall be sued by creditors who have grievances, and direct her officers to pay the judgment out of her treasury. The above-mentioned evil effects of the eleventh amendment might be for the most part avoided, if all the States of our Union would provide in this manner for the settlement of claims against themselves. Most bondholders would consider themselves safe, if they could present their

bonds to a court of justice for adjudication regarding their validity, and if they could be assured that the courts were possessed of powers adequate to the enforcement of the collection of a tax for the payment of the bonds in case they were adjudged to be valid. Our States, however, have not as a rule seen fit to confer such powers upon their courts. Most of them have considered it beneath the dignity of a sovereign to stand as defendant in a suit at law. It has been taken for granted that a State will always do right, and that it is tantamount to admitting that the sovereign people are not always to be trusted, to provide for their being forced by a court of justice to do what they would not do voluntarily. Such an admission, it has also been urged, could not but injure the national credit.

From the standpoint of legislation on this subject, our States fall into three classes : those which have entirely ignored the matter ; those whose constitutions provide that the legislature may determine in what manner suit may be brought against the State ; and those which expressly prohibit the State being made a defendant in a suit at law.

In constitutions of the first class are usually found simply restatements of the prohibition contained in the federal constitution against the impairment of contracts. This, of course, amounts to nothing as a protection to persons seeking their rights. To the second class, thirteen of our States

belong.¹ Of these, however, only five — Indiana, Mississippi, Wisconsin, Nebraska, and Nevada — have anything approaching adequate legislation on the subject. The statutes of Indiana provide that suit against the State may be brought in the Superior Court of Marion County, and appealed by either party to the Supreme Court. The value of this privilege is, however, considerably diminished by the provision that “whenever by final decree or judgment of said superior court of Marion County, Ind., or the Supreme Court, a sum of money is adjudged to be due any person from the State of Indiana, no execution shall issue thereon, but said judgment shall draw interest at the rate of six per cent per annum from the date of the adjournment of the next ensuing session of the General Assembly until an appropriation shall have been made by law for the payment of the same, and said judgment paid.”² The statute of Mississippi resembles this, particularly in the provision that no judgment shall be paid until an appropriation shall have been made by the legislature,³ and the

¹ See Pennsylvania Constitution, Art. I. Sec. 11; Indiana C., IV. 24; Wisconsin C., IV. 27; Nebraska C., VI. 22; Delaware C., I. 9; Kentucky C., VIII. 6; Tennessee C., I. 17; California C., XX. 6; Oregon C., IV. 24; Nevada C., IV. 22; South Carolina C., XIV. 4; Mississippi C., IV. 21; Florida C., IV. 19.

² Revised Statutes of Indiana (1892), vol. iii. pp. 103, 104. One section expressly exempts from the operation of the statute the stock issued in aid of the Wabash and Erie Canal.

³ See Annotated Code of Mississippi, 1892 (Thompson, Dillard, & Campbell), chap. 131.

experience of that State has demonstrated that to leave the matter of paying a judgment to the discretion of the legislature is fatal to the interests of defrauded bondholders.¹

The legislature of Wisconsin has made a similar provision for the bringing of suits against that State. Here, however, the proceedings come in the first instance before the Supreme Court, questions of fact, however, being determined by some circuit court. This State, however, makes the decision of her Supreme Court final and binding by the following provision: "Whenever a final judgment against the State shall be obtained in the Supreme Court, it shall be the duty of the clerk of the said court to make and furnish to the Secretary of State a transcript of such judgment, and the Secretary of State shall, thereupon, audit, in favor of the person so obtaining such judgment, the amount of damages and costs therein awarded, and shall draw his warrant on the treasury therefor. There is hereby appropriated from the State treasury out of any money therein, not otherwise appropriated, a sum sufficient to carry into effect the provision of this act" (Statutes of Wisconsin, 1871, vol. ii. pp. 1789-1791). This statute would be all that could be asked in behalf of State creditors, were it not for the following clause appended to a section of the statute which prescribes the *modus operandi* of

¹ See chap. ii.

bringing suit against the State: "*Provided always,* that no judgment rendered in any such action shall be evidence of any public debt against the State, nor shall the State be held liable to pay any such judgment, or any part thereof, or for any costs which may accrue in the prosecution thereof." Provisions in all essentials like those of Wisconsin (the last one quoted being accepted) have been made by the legislature of Nebraska.¹

The legislature of Nevada has complied with the provision of her constitution only to the extent of allowing the State to be sued on "a claim . . . for services or advances authorized by law, and for which an appropriation has been made, but of which the amount has not been fixed by law." If the Board of Examiners, or the State Comptroller, refuse to allow a portion of such claims, suit can be brought against the State to recover the portion thus disallowed.²

The legislatures of other States whose constitutions express a willingness to allow the State to be sued, with one exception, have let the matter go by default; and silence of the statutes on this point has been interpreted to mean that the State cannot be made defendant in a suit at law.³

The exception referred to is that of the legisla-

¹ See Consolidated Statutes of Nebraska (1891), Sec. 4307-4323.

² See General Statutes of Nevada, 1885 (Bailey & Hammond), Sec. 3895.

³ See *People v. Talmage*, 6 Cal. 258.

ture of Tennessee, which, instead of providing how suits can be brought against the State, has declared that no such suits shall be allowed under any circumstances. Section 3507 of the code of 1884 (Millikin & Vertrees) reads as follows: "No court in the State of Tennessee has, nor shall hereafter have, any power, jurisdiction, or authority to entertain any suit against the State, or against any officer of the State, acting by authority of the State, with a view to reach the State, its treasury, funds or property ; and all such suits now pending, or hereafter brought, shall be dismissed as to the State or such officers on motion, plea, or demurrer of the law officer of the State or counsel employed by the State."

Arkansas, Alabama, Illinois, Virginia, and West Virginia belong to the third class above mentioned. They do not allow themselves to be sued. The constitution of Arkansas, Sec. 20, Art. V., reads as follows: "The State of Arkansas shall never be made defendant in any of her courts." That of West Virginia, Art. VI. Sec. 35, says : "The State of West Virginia shall never be made defendant in any court of law or equity." The provisions in the constitutions of the other States are in every essential respect similar to these.

North Carolina and Michigan are exceptional cases in that they do not properly belong to either of the three classes mentioned. The constitution of the former State, Art. IV. Sec. 11,¹ provides for

¹ Constitution of 1868.

the settlement of claims by the Supreme Court, but adds that "its decisions shall be merely recom-mendatory; no process in the nature of execution shall issue thereon; they shall be reported to the next session of the General Assembly for its action." In the constitution of Michigan there is a provision that the Secretary of State, Treasurer, and Commissioner of Lands shall constitute a board for the adjustment of claims against the State.¹ Such a provision, however, is of little value unless enforced by stringent legislation giving this board power not only to adjust the claims, but also to draw upon the treasury for their payment. It may also be doubted whether this provision would cover the case of the holder of a repudiated bond.

Other facts or arguments are not necessary to our present purpose. A brief examination of the constitutional or statute law of our States is ade-quate to show that, with possibly four or five ex-ceptions, they have not provided for the protection of defrauded creditors. Abundance of facts given in the following chapters place this conclusion beyond all controversy.

In conclusion, then, we may summarize that por-tion of our public law which relates to the repudi-ation of debts as follows:—

1. States are forbidden by the Constitution of the United States, and in many cases by their own

¹ Art. viii. Sec. 4.

constitutions, to violate contracts into which they have entered.

2. The United States Constitution as originally adopted permitted individuals to bring suit in the federal courts against States guilty of having violated their contracts, and in so far afforded them a remedy; but the eleventh amendment deprived persons of this privilege, and virtually took away this remedy. At the present time the federal government can afford relief to a defrauded State creditor only indirectly and under special circumstances. The Supreme Court still claims the right to entertain suits brought by States against persons, and it still persists in the right to decide concerning the constitutionality of State laws which are involved in cases coming within its jurisdiction. It can, therefore, protect a person against whom a State is attempting to enforce an unconstitutional law, and it can protect a person in his right to bring suit against State officials who attempt to enforce unconstitutional laws.

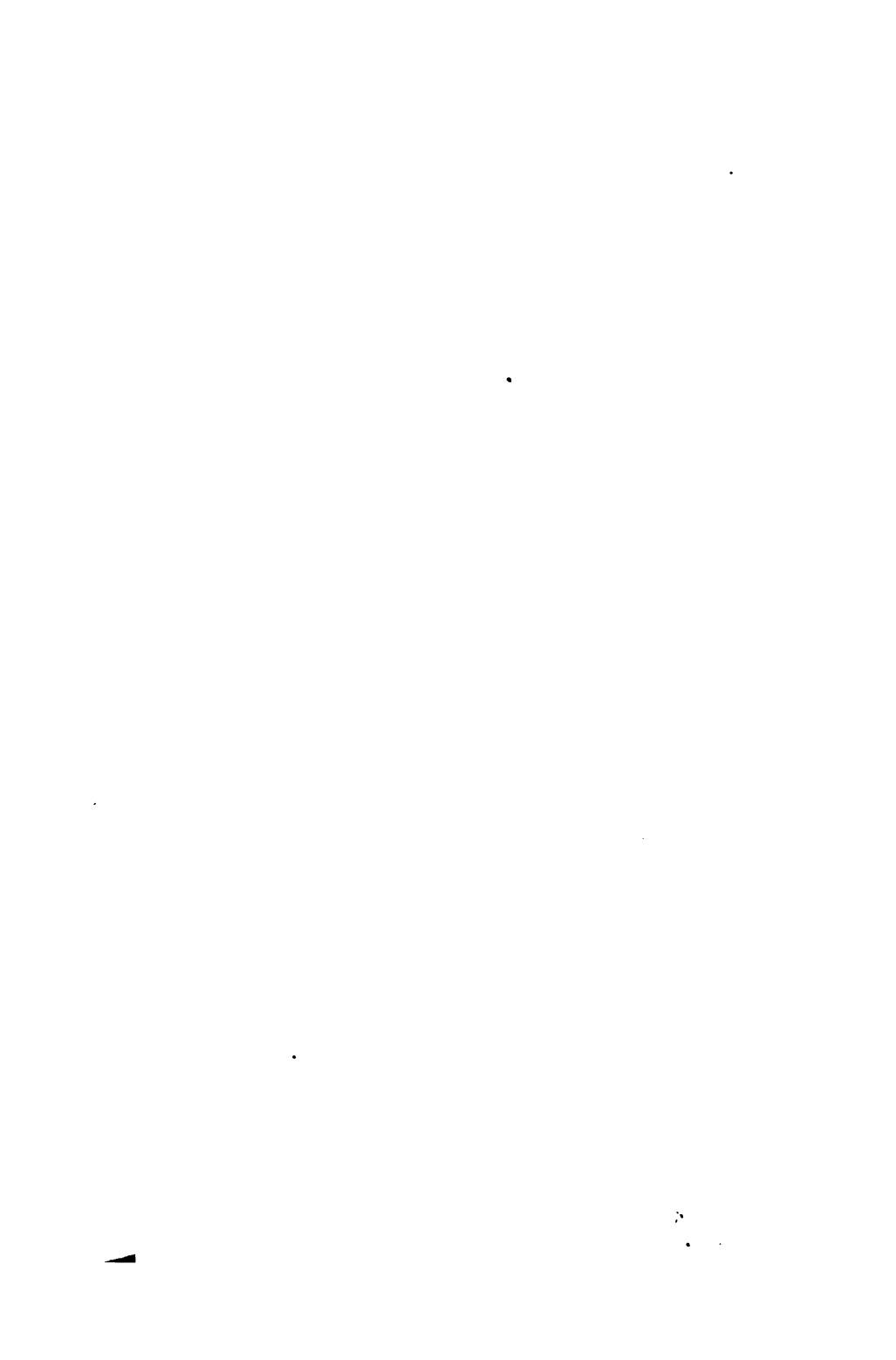
3. Our States, with four or five exceptions, have failed to provide remedies against themselves in cases of repudiation.

4. The general conclusion is that our States are practically free to pay their debts or to repudiate them as they see fit.

The following chapters will indicate the use which they have made of this freedom.

II.

REPUDIATION IN MISSISSIPPI,
FLORIDA, AND ALABAMA.



CHAPTER II.

REPUDIATION IN MISSISSIPPI, FLORIDA, AND ALABAMA.

Mississippi.

OF the States considered in this sketch, Mississippi was the first to practise repudiation. As early as the forties she refused to pay one class of bonds aggregating in face value \$5,000,000, and in the fifties another class aggregating \$2,000,000 met a like fate.

The first mentioned bonds were issued in June, 1838, in payment of five thousand shares of stock in the Union Bank of Mississippi. This bank was chartered on the 5th of February, 1838, under a law which pledged the State to the issue of bonds to the amount of \$15,500,000, for the purpose of supplying the working capital. Several conditions were attached to this issue, among which the most important are the following: (1) that subscription books for the whole amount (\$15,500,000) should be opened; (2) that only real estate owners in the State of Mississippi should be permitted to subscribe; (3) that said subscribers should give first-class mortgage securities, which were to be turned over by the bank officials to the State as

security for the bonds ; (4) that the bonds should not be sold below par.¹ The validity of the charter which prescribed these conditions rested upon the compliance of the legislature with the following provisions of the constitution designed to prevent hasty and unpopular legislation : " No law shall ever be passed to raise a loan of money on the credit of the State, or to pledge the faith of the State for the payment or redemption of any loan or debt, unless such law be proposed in the Senate or House of Representatives, and be agreed to by a majority of the members of each house, and entered on their journals with the yeas and nays taken thereon, and be referred to the next succeeding legislature, and published three months previous to the next regular election in three newspapers of the State ; and unless a majority of each branch of the legislature so elected, after such election, shall agree to and pass such law." ²

Ten days after this enactment a bill was passed entitled " An act supplementary to an act to incorporate the subscribers to the Mississippi Union Bank," which contained the following provision : " As soon as the books of subscription for stock in the said Mississippi Union Bank are opened, the Governor of this State is hereby authorized and required to subscribe for, in behalf of this State, fifty thousand shares of the stock of the original

¹ For the charter, see Laws of Mississippi for 1838, p. 9.

² See Art. VII. Sec. 9 of the constitution of 1838.

capital of the said bank ; the same to be paid for out of the proceeds of the State bonds, to be executed to the said bank as already provided for in the said charter.”¹ Under this supplemental act, bonds to the amount of \$5,000,000 were executed to the bank in purchase of stock. They were sold to Mr. Nicholas Biddle, an agent of the United States Bank, and were paid for, at the rate of 4s. 6d. per dollar, in five equal instalments on the first day of November, 1838, and on the first days of January, March, May, and July, 1839. Of these bonds 1,543 were afterwards deposited by the Bank of the United States as security for loans to it in Europe, and some of them fell into the hands of Hope & Co. of Amsterdam.

With the proceeds of this sale the bank commenced business.² Circumstances were unfavorable to it from the beginning. President Jackson’s specie circular and the war on the United States Bank had already brought the people of the State into financial straits. There was need of more money ; and the proper way to obtain it, according to the notions of the time, was to charter new banks. Demands for charters, therefore, came to the legislature thick and fast, and for a time they were granted without hesitation, as the following table shows : —

¹ For the supplemental act, see *Laws of Mississippi* for 1838, p. 33; also Appendix III.

² The charter authorized the opening of the bank as soon as \$500,000 were paid in on the stock.

Bank capital authorized in 1833	\$ 6,000,000	¹
" " " " 1836	21,000,000	
" " " " 1837	10,300,000	
" " " " 1838	15,500,000	

No one at first seemed to appreciate the danger of this policy, notwithstanding the fact that numerous bank failures in New England, New York, and the greater part of the South and West pointed clearly to it. The Governor, however, did finally conclude that the State was suffering from an over-issue of bank notes, and vetoed thereafter the charters granted by the legislature. Unfortunately, he began to veto *just after* he had approved the charter for the Union Bank and the act supplemental to it.²

Having thus commenced its existence under the most unfavorable circumstances, the bank should have been managed with great discretion and conservatism. But, on the contrary, its capital was loaned to insolvent individuals and corporations, and its management resembled that of a gambling concern.³ In less than two years after the granting of its charter it was hopelessly insolvent.⁴

In January, 1841, the Governor communicated to the legislature the facts concerning the bank's

¹ *Bankers' Magazine*, Nov. 1849, p. 341.

² See "Nine Years of Democratic Rule in Mississippi," p. 19.

³ See "The Origin of Repudiation," *Bankers' Magazine*, December, 1846.

⁴ "Report of Bank Commission to the legislature of the State of Mississippi, declared Jan. 4, 1840.

condition, and recommended that it be placed in liquidation, and that the five millions of bonds negotiated in 1838 be repudiated. He claimed that these bonds were illegal, and that fraud had been perpetrated in their issue.¹ In a letter to Hope & Co. of Amsterdam, who demanded payment of overdue interest, he again insisted upon repudiation.² The legislature of 1841 protested in vigorous terms against this recommendation, but the people showed their approval by sending to the capital in 1842 a legislature which denied that the State was under legal or moral obligations to pay the bonds in question.

The chief argument used by the repudiationists was the unconstitutionality of the supplemental act under which these bonds were issued.³ This act, it was claimed, was something more than an amendment to the original charter, and, according to the constitutional provision already quoted, should have received the sanction of two legislatures. The argument was based upon the fact that the supplemental act ordered the sale of bonds in *payment of stock* in the Union Bank, while the original act, which was passed in a con-

¹ See article on "The Origin of Repudiation" in the *Bankers' Magazine* for December, 1846.

² The letter mentioned is quoted in the *Bankers' Magazine* for November, 1849, in an article entitled "Repudiation."

³ For an able presentation of this argument, see Jefferson Davis's letter in reply to an attack of the *London Times*, quoted in the *Bankers' Magazine* for November, 1849, p. 363.

stitutional manner, authorized no such purchase, but simply the issue of bonds under certain definite conditions, none of which had been complied with in the issue of the five millions.

Another illegal proceeding was the sale of the bonds on credit, whereas the original act forbade a sale below par. It was claimed that a sale on credit practically amounted to a sale below par, interest being paid on the whole amount from the beginning. It was further claimed that the State suffered loss from the change in the stipulations from dollars and cents to pounds, shillings, and pence.

Honest differences of opinion have been expressed concerning the validity of these arguments, and especially concerning the alleged unconstitutionality of the supplemental act. That the representatives of the people, however, then and for a long time after, saw nothing wrong in this act and the operations of the Governor and bank officers in the negotiation of the bonds is evident from the following facts. The first legislature which met after the sale of the bonds passed the following resolution: "Resolved that the sale of the bonds was highly advantageous to the State and the bank, and, in accordance with the injunctions of the charter, . . . bringing timely aid to an embarrassed community." The next legislature (1840) uttered no protest against the bonds, though it legislated concerning the bank. The acquiescence

of two successive legislative bodies should—in equity, at least, if not in law—be interpreted as giving validity to the act under which the bonds were issued, as well as to the manner of their issue.

This view of the case certainly becomes tenable when we review the decisions of Mississippi's own courts. The State Constitution at the time of the issue of these bonds permitted suit to be brought against the State in the Court of the Chancellor, and, on appeal, in the High Court of Errors or Appeals. The holders of repudiated bonds availed themselves of this constitutional privilege, and both courts decided that the State was legally and morally bound for the payment of the bonds.

In the case of *Campbell v. Mississippi Union Bank* (6 H. 625) the court made the following statement concerning the supplemental act claimed to be unconstitutional: “The supplemental act makes no alteration whatever in regard to this section (Sec. 5 of the original act which pledged the faith of the State). It changes in some respects the mere detail of the original charter in the mode of carrying the corporation into successful operation, and authorizes the Governor to subscribe for the stock on the part of the State. The object of this pledge is not changed; on the contrary, the supplemental act was passed in aid of the original design. In applying the constitutional test to the fifth section, I am not able to

perceive any reason which to me seems sufficient to justify that it is unconstitutional."

In the case of the State of Mississippi *v.* Johnson (3 C., p. 755) the court says: "From the view we take of the questions connected with this branch of the subject, we are compelled to hold that the supplemental act was not void in consequence of not having been passed in conformity with the direction contained in the ninth section of the seventh article of the constitution."

Further on (p. 762) in the same decision the statement is made: "Having examined the several grounds on which it was alleged that the supplemental act was void, we have come to the conclusion that it was not void, but hold it to be a valid legislative enactment."

Regarding the claim that the bonds were sold for less than their par value and hence were unconstitutional, the court said: "We are of opinion that it does not appear from the facts of the case that the bonds were sold for less than their par value; consequently that the sale was neither illegal nor void" (p. 769).

Before recording the last act in this repudiation drama, it will be well to trace the history of the other repudiated bonds to which reference was made above. They were the so-called Planters' Bank bonds. This institution was chartered by the State in 1830 with an authorized capital of \$3,000,000, of which \$2,000,000 were reserved for

the State. Bonds to the amount of \$500,000 were accordingly issued in July, 1831, and the remaining \$1,500,000 in March, 1832. These bonds were sold in the Philadelphia market at a price which yielded the State a premium of about \$250,000.¹ This sum was set aside as a sinking fund, into which it was decided to turn the proceeds of the State's share of the bank dividends.

The bank flourished well up to 1839. In the mean time it had established branches in several cities of the State; had issued a large circulation and received large deposits; and, during a portion of the period, had paid ten per cent dividends. The sinking fund in 1839 had grown to \$800,000. In this year, however, fortune changed. The period of the bank's prosperity coincided with the period of inflation which has been described, and when the bubble of bank credit burst throughout the State, it found itself unable to meet its obligations. Unable to pay interest on the bonds, the State was called upon to meet the deficiency. This, however, she failed to do. No one at this time seriously proposed the repudiation of the bonds, but the State was delinquent in letting the interest go by default. The sinking fund, on account of bad investments, shrunk rapidly, amounting in 1840 to \$525,765 and in 1848 to no more than \$100,000.

¹ See article on "Banking and Repudiation in Mississippi" in *Bankers' Magazine* for August, 1863.

In the legislative session of 1848-49 the subject of the Planters' Bank bonds and the overdue interest on them was agitated. The sentiment in favor of paying them and the interest due so far as possible prevailed, and a law was passed authorizing the application of the sinking fund to this latter purpose. There was developed, however, considerable opposition to this measure, and a desire to repudiate the bonds manifested itself on all sides. The State Treasurer refused to pay the coupons on certain bonds which were presented, on the ground that those coupons were first to be paid which were cut from the oldest bonds, or, rather, that the interest must be paid on the oldest bonds first. A suit was brought for a *mandamus* compelling him to make the payment, and thus an opportunity was given the court to decide the question concerning the validity of these bonds. It is a noticeable fact that no one connected with this suit so much as suggested that these bonds were in any respect invalid. It was taken for granted that they were legal and constitutional, and that they ought to be paid.¹

As in the case of the Union Bank bonds, so here the opinion of the courts seemed to have very little weight. The mania of repudiation seemed to have infected the whole people. They only thought of ridding themselves of a burden, and did not consider the equities of the case. At the election of

¹ See *Wilson v. Griffith*, 2 C., p. 468.

1852 the question was submitted to popular vote whether a tax should be levied to pay the interest on the Planters' Bank bonds, and a majority of 4,000 against the levy of such a tax was returned. This vote undoubtedly meant that the people were in favor of the repudiation of these bonds, and willing legislatures so interpreted it.

The fate of both these and the Union Bank bonds was sealed by the constitution adopted in 1875, which contained the following clause : "Nor shall the State assume, redeem, secure, or pay any indebtedness claimed to be due by the State of Mississippi to any person, association, or corporation whatsoever, claiming the same as owners, holders, or assignees of any bond or bonds known as the Union Bank bonds or the Planters' Bank bonds." Since that time the State has paid no heed to the cries of her numerous creditors, or to the reproaches of her sister States, or to Wall Street's opinion of her credit.

Florida.

Florida, unlike her sister States in the South, has had two attacks of the disease of repudiation. During the first one she disposed of \$3,900,000 of bonds issued or indorsed for banks, and during the second of \$4,000,000 of railroad aid bonds.

The story of the bank bonds is long and interesting, but for present purposes it may be briefly

told. In 1833 the territory chartered the Union Bank of Florida with an authorized capital of \$3,000,000, which sum was raised, as authorized by the charter, by a sale of territorial bonds. Lands and slaves of stockholders were hypothecated to the territory as security. The charter prescribed that the bonds must not be sold below par; that the property to be hypothecated as security should be appraised according to certain regulations; and that a portion of the profits of the bank should accrue to the territory in consideration of the aid received.¹ The stockholders were not obliged to pay any part of the amount they subscribed, but simply to secure their subscription by bonds or mortgages. The bonds were sold mostly in Europe in 1834, 1838, and 1839, and at a "nominal" discount of from three to ten per cent.² The directors of the bank interpreted the charter to mean that the bonds must not be sold below par *in the funds of Florida*, hence eight or ten per cent discount in London amounted to a considerable premium according to their notion, and the discount was "nominal" rather than real.

The bank began business on the 16th of January, 1835. Most of its stock was owned by a comparatively few persons, to whom was loaned

¹ See Laws of Florida for 1833.

² See letter of the bank president to the Chairman of the Committee on Banks appointed in 1840.—Ex. Doc. No. 111, 2d Session of Twenty-sixth Congress, vol. iv. p. 298.

the greater part of its capital. The security was the stock held, which, however, had not been paid for, but which was secured by lands and slaves, purchased with the proceeds of the loans.¹ The interest on the bonds sold in 1834 was paid by the negotiation of new bonds, and the bank was able to continue this process until all the bonds authorized to be issued had been disposed of. The bank was also guilty of overtrading and of issuing an excessive amount of circulating notes.

May 10, 1837, the bank suspended specie payments, and grave fears concerning its solvency were felt. It was unable to resume payment of specie in 1839 and 1840, when most solvent banks of other States resumed, and, indeed, it never again became a specie-paying bank. In 1842 it failed to pay the interest on the bonds loaned it, and the question of the territory's liability — which had been under discussion for two or three years at least — became a live issue.

In 1840 the Judiciary Committee of the territorial legislature, to which was referred the question of the right of the territory to pledge the faith of the people in aid of corporations, expressed an adverse opinion in the following resolutions :—

1. *Resolved*, That the power of the Governor and Legislative Council of the Territory of Flor-

¹ See Report of Commission on Banks appointed by territorial legislature of 1840.—Ex. Doc. No. 111, 2d Session of Twenty-sixth Congress p. 278.

ida, delegated by Congress over "all rightful subjects of legislation," under that clause in the Constitution which invests Congress with authority "to make all needful rules and regulations respecting the territory and other property belonging to the United States," does not extend to the creation of banks with exclusive privileges and franchises, nor to the issuing of bonds and guarantees in aid of such institutions, pledging the faith and credit of the people of Florida.

2. *Resolved*, That such pledge of the faith and credit of the people of Florida is null and void.¹

Though the opinions of eminent lawyers² were diametrically opposed to the sentiment expressed in these resolutions, subsequent governors³ of the Territory encouraged the people in the welcome belief that the bonds issued in aid of banks were null and void on account of their illegality. At the time the Union Bank defaulted, and subsequently Governor Call⁴—who was an exception to the rule—opposed the plan of repudiation, but claimed that the Territory was not liable until all the resources of the bank were exhausted. Unfortunately, the people as represented in the Legis-

¹ Ex. Doc. 2d Session of Twentieth Congress, vol. iv. p. 269.

² See in the above-mentioned document the opinions of James Kent, Horace Binney, Peter A. Jay, and Daniel Webster.

³ See message of Governor Branch dated Jan. 10, 1845, and the message of Governor Reid dated Jan. 11, 1846.—Ex. Doc. 1st Session Twenty-ninth Congress, pp. 685 and 779 respectively.

⁴ See quotations from his message contained in the above-mentioned document.

lative Council did not agree with him when the time came for the Territory to shoulder her obligations, and the outcome was that Florida entered the Union as a State adhering to the doctrine that her new form of political life released her from these obligations.

This statement applies to the other obligations of the Territory in behalf of banks, amounting in all to \$900,000, as well as to the bonds of the Union Bank, and it is only necessary to state briefly the nature of these obligations.

The Bank of Pensacola was chartered in 1831 with an authorized capital of \$200,000, and began business Nov. 28, 1833. Early in 1835 it was authorized by act of the Legislative Council to increase its capital to \$2,500,000, and to purchase stock in the Alabama, Florida, and Georgia Railroad. To aid in this purchase the bank was further authorized to issue its bonds to the amount of \$500,000, and the Governor was authorized to indorse them in behalf of the Territory. The bank executed the provisions of this act, and the bonds were duly issued and indorsed, and the railroad stock purchased. The Territory received as security a mortgage on the capital stock of the bank, including the railroad shares.

The life of this institution was very short. By 1843 it had passed out of existence. The causes of its early demise were many; but chief among them was the investment of too much money in

the Alabama, Florida, and Georgia Railroad. This road failed, and the mortgage held by the Territory proved worthless. The only alternative left being repudiation or payment of the bonds by taxation, the former was adopted for the reasons mentioned above.

The Southern Life Insurance and Trust Company was incorporated Feb. 14, 1835. Its charter granted, among other powers, the right to insure life; to receive moneys in trust at such rates of interest as could be obtained, not exceeding eight per cent per annum; and to buy, discount, and sell drafts, promissory notes, and bills of exchange. Its capital stock was fixed at \$2,000,000, with the privilege of increasing it to \$4,000,000. The company was authorized to issue bills or notes, other than drafts or bills of exchange, to the amount of capital actually paid in, and, *in addition*, certificates of one thousand dollars each, bearing not more than six per cent interest, for the payment of which the faith of the Territory was to be pledged by the indorsement of the Governor. As security the charter provided: "That in case the said company shall make defaults in payment of the principal or interest of such certificates, it shall be the duty of the Court of Appeals of said Territory, on being certified of the fact by the Governor, to issue an appropriate process to the marshal, commanding him to take so much of the money, choses in action, or other effects or property of said

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company, and bring the same into court forthwith as will be sufficient to indemnify the government from loss by reason of such default, and the court is hereby empowered to direct the sale of the same.”¹

The company commenced operations in the same year that it was chartered, before the act of incorporation had been approved by Congress. The Senate Committee on Finance, of which Daniel Webster was chairman, made a report² in June, 1836, which strongly disapproved the act, but recommended the amendment of the charter in view of the fact that the company had already commenced operations. Amendments were made in February, 1837, and February, 1838, but they increased rather than limited the powers already granted.

The certificates issued and guaranteed aggregated \$400,000 at the time the Territory was called upon to meet the obligations incurred in behalf of this company. The property she was authorized to seize and sell had no existence, and she would of necessity have lost the face value of the certificates had she not taken refuge behind the claim that as a State she was not responsible for the debts contracted in behalf of banks and other corporations during her Territorial life.

¹ Ex. Doc. No. 226, 1st Session Twenty-ninth Congress, vol. viii. p. 746.

² Sen. Doc. No. 409, 1st Session Twenty-fourth Congress, vol. vi.

The reasons assigned for the repudiation of the obligations already described are entirely fanciful, and furnish grounds for the claim that the Territorial authorities were hard pressed to assign a rational cause for their action. A very real and much better reason for repudiation could have been assigned, and indeed was given by the representatives of the Territory, in their debates upon the question in the session of 1841. About 1840 the population of Florida was estimated at about fifty thousand souls. Hence the debt which the failure of these banks brought upon her amounted to over fifty dollars per capita, and the further issues which were demanded by the acts chartering the banks would have brought the debt to about two hundred dollars per capita.¹ There was very little wealth in the Territory at the time, and it would have been impossible to pay the interest on such a debt and to meet the current expenses of the Territorial government. It is difficult to see, therefore, how the holders of these bonds could have obtained either principal or interest. It is possible that in more prosperous days the State might have paid her old debts; but, in the light of her subsequent financial history, we must acknowledge that this possibility was very remote.

The constitution under which Florida entered the Union as a State made it "the duty of the General Assembly as soon as practicable to ascer-

¹ See Tenth Census, vol. vii. p. 587.

tain by law proper objects of improvement in relation to roads, canals, and navigable streams, and to provide for a suitable application of such funds as may be appropriated for such improvements."¹ In order to carry out what were understood to be the provisions of this clause, an act was passed in January, 1855, providing for the encouragement of a liberal system of internal improvements, and authorizing the issue of State bonds to the amount of \$10,000 per mile in aid of railroads. The act provided that such bonds should constitute a first mortgage lien on the roads, their equipments and franchises. It was subsequently amended so as to permit the issue of bonds to the amount of \$16,000 per mile, and to permit the Governor, in case a company defaulted in the payment of either principal or interest, or any part thereof, after twelve months to enter upon and take possession of the road and its franchises, and to sell them at public auction. Under authority of these acts bonds to the amount of \$4,000,000 were issued in aid of the Jacksonville, Pensacola, and Mobile Railroad and the Florida Central, bonds of these roads of an equal amount being taken in exchange.

Early in the seventies these roads defaulted in their interest payments, and the State was called upon to make good the deficiency. This she was utterly unable to do. Her income had been for

¹ Art. XI. Sec. 2.

many years considerably less than her expenses.¹ From 1846 to 1856 her finance reports show an average annual deficit of about nine thousand dollars. Bonds were issued from time to time for the purpose of retiring her floating debt, and the accumulating interest on these made the deficits larger after the war. The financial report for the year ending Dec. 31, 1873, states that the total receipts for that year were \$257,233.54, while the warrants issued during the same period amounted to \$304,214.35. A floating debt amounting to \$224,827.67 existed at the same time.²

As authorized by law, the State took possession of the defaulting roads, but was prevented for a long time from selling them by litigation in the courts. The case of the State was complicated by the fact that the Western North Carolina Railroad

¹ The following table, taken from the Tenth Census, vol. vii. p. 588, shows the amount of the deficit for the years named :—

1846,	revenue collected,	\$27,597.28,	warrants issued,	\$56,009.57
1847	"	45,357.60	"	52,787.46
1848	"	56,832.72	"	54,913.81
1849	"	58,638.11	"	55,807.79
1850	"	46,079.84	"	38,559.33
1851	"	57,141.10	"	67,187.73
1852	"	55,619.63	"	55,234.49
1853	"	57,278.36	"	108,607.88
1854	"	62,801.51	"	53,417.13
1855	"	68,365.19	"	85,365.19
				\$535,711.34
				\$627,890.58

² See Financial Chronicle for Feb. 8, 1873.

had acquired a first mortgage lien on the Florida Central, and naturally objected to its being sold for the benefit of the State. During the progress of this litigation, cases were brought before the courts involving the validity of the railroad aid bonds, and the State was relieved of her anxiety and care in the matter by a decision to the effect that the bonds were unconstitutional.

The court claimed that the constitution did not authorize the exchange of the bonds of the State for those of railroad companies, but simply the issue of bonds for the construction of public works which should be her own property. The following are the words of the court in the case of *Holland v. the State of Florida and others*: "Where in the constitution can authority be found that will authorize the State bonds to be issued to be exchanged for railroad bonds? This *swapping* of State obligations for railroad paper at the will of the legislature, *ad libitum*, is certainly a new idea begotten by those who believe that the legislature is the dispenser of all power, and that it only requires a sufficient number of legislative votes to do anything. But this court will guard the constitution from such pernicious construction."¹

After the rendition of this decision the State no longer troubled herself about the railroad aid bonds, and subsequently omitted to mention them as among her liabilities.

¹ 15 Florida, 491.

Adding the \$4,000,000 of bonds with accrued interest thus disposed of to the \$3,900,000 of bank bonds before mentioned, makes the aggregate of Florida's repudiation amount to something over eight million dollars.

Alabama.

The first constitution of Alabama, adopted July 5, 1819, authorized the establishment of a State bank with as many branches as the legislature might deem proper. It also provided that at least two-fifths of the stock in these banks should be reserved for the State, and prescribed a number of other rules to which the banks were to be subject. Under the authority granted in this article of the constitution, the legislature established a central bank with several branches, and laid the foundation of the State debt. In pursuance of a series of acts dating from 1823 to 1826 the State became possessed of bank stock to the amount of \$8,000,000. A portion of this went to the State school fund and to the trustees of the University of Alabama as compensation for the lands granted to these respectively by the federal government.

These banks prospered greatly during their early history. The greater part of the expenses of the State was paid by the earnings of her stock, most of her direct taxes being abolished in 1836. But during the financial convulsion of 1837 they became

involved in financial difficulties, and suspended specie payments. A special session of the legislature was called to afford relief, and, among other measures, an act was passed making the bills of the bank receivable for dues of the State. Prosperity did not come with these measures of relief, however, but, instead, the condition of the banks became worse with each year, until in 1842 they were placed in liquidation.¹ The State was responsible for their bills and most of their obligations, and the settlement left her with a considerable debt, the interest and principal of which, however, she proved herself entirely able to pay by resorting to heavy taxation. She met her interest charge regularly each year before the war, and paid principal enough to reduce the debt in 1861 to \$3,445,000.² During the war she paid that portion of the interest which was due on the bonds held in London, but paid no interest in New York after January, 1861.²

When the war closed the State, of course, was in a prostrate condition, financially as well as otherwise exhausted by the struggle through which she had passed, and, owing to defective revenue laws, her ordinary sources of income produced very little. In 1866 her receipts were only \$62,967.80, while her necessary disbursements were \$606,494.39.

¹ See Tenth Census, vol. vii. p. 592.

² Of the total debt of \$3,445,000, \$1,336,000 were held in London, and \$2,109,000 in New York. Interest on the London portion was paid regularly up to January, 1865.

In 1867 her income increased to \$691,048.86, and her disbursements to \$819,434.85. In 1868 and, indeed, in nearly every subsequent year until 1876, there was a large balance against her.¹

In order to meet necessary expenses, the legislature of 1865 passed an act² on Dec. 15 which authorized the issue of bonds to the amount of \$1,500,000 to mature in twenty years, and to bear interest at eight per cent if they were dollar bonds, and at six per cent if they were sterling bonds. A sufficient amount of these was issued before November, 1866, to bring the debt, exclusive of the educational and university funds, up to \$4,550,062.22.³ Other bonds and certificates of indebtedness were subsequently issued to meet the deficits, thus bringing this portion of the State debt, exclusive of the educational and university fund, to \$5,382,800 on Sept. 30, 1870, and to \$6,543,800 on Sept. 30, 1871.⁴ It was increased still more under authority of acts passed Dec. 31, 1872, Feb. 25, 1873, and Dec. 19, 1873.

The most troublesome portion of the debt of this State was founded by an act⁵ passed Feb. 19, 1867, which authorized the indorsement of railroad

¹ See *Financial Chronicle* for March 11, 1871.

² See *Laws of Alabama* for 1865, p. 40.

³ Tenth Census, vol. vii. p. 592.

⁴ See the State Auditor's Report for the year ending Sept. 30, 1871; also the *Financial Chronicle* for Nov. 30, 1867, and March 11, 1871.

⁵ See *Laws of Alabama*, 1866-67 p. 686.

bonds to the amount of \$12,000 per mile. One clause, providing that this indorsement be made for each section of twenty miles of completed road, was amended by an act¹ passed Aug. 7, 1868, which permitted the indorsement to be made for each five miles finished after twenty miles had been constructed, and the indorsement to be raised to \$16,000 per mile. As security for this indorsement, the State was to be given a first mortgage on the roads; and by an act² approved Feb. 21, 1870, the Governor was authorized to take possession of any road in case it defaulted in payment of interest, and to sell it for the benefit of the State, if its earnings were not sufficient to pay the accruing interest. The same act also states that in case of a default in the payment of interest by any road, "the Auditor of the State is authorized, and it is made his duty, upon his warrant, to draw from the treasury any sum of money necessary to pay the interest on any of the bonds indorsed by the State, whenever said interest is not provided for by the company; and to pay such interest when due as provided for in this act; and, in case the exigency requires, the Governor is hereby authorized and directed to negotiate temporary loans for such purpose, and pledge the faith of the State for the payment of the same, so that the interest upon all the indorsed bonds of the State shall be promptly paid when due."

¹ See Laws of Alabama, 1868, p. 198.

² *Ibid.*, 1870, p. 149.

The railroad companies of the State speedily took advantage of these acts. Up to Nov. 15, 1869, \$2,600,000 of railroad bonds had been indorsed ; by Sept. 30, 1870, \$8,480,000 ;¹ and by Sept. 30, 1873, \$18,686,000. In addition to this, \$2,000,000 of eight per cent State bonds were issued to the Alabama and Chattanooga Railroad under authority of an act² passed Feb. 11, 1870, and later \$300,000 of State bonds were issued to the Montgomery and Eufaula Railroad Company. Of all in the State, the former company was the most liberally aided, having had over \$5,000,000 of its bonds indorsed, and \$2,000,000 of State bonds granted to it directly.

It seems that with ordinary foresight the State officers might have predicted that these railroad companies would default in the payment of interest on these indorsed bonds. Most of their roads were in process of construction, and yielded no revenue ; and the mere fact that they found it necessary to call upon the State for aid was indicative of a lack of funds. It might also have been predicted with certainty from the beginning that the payment by the State of the interest on these indorsed bonds would reduce her to bankruptcy. These evils, however, were either not foreseen or not heeded, and the State was compelled to pass through the humiliation which

¹ See Auditor's Report for year ending Sept. 30, 1870.

² Laws of Alabama for 1870, p. 89.

inability to meet obligations brings. The Alabama and Chattanooga Railroad Company failed to pay the interest which fell due Jan. 1, 1871,¹ and with this the trouble began. The State took possession of the road, and ultimately sold it, after having paid out nearly a million dollars in interest on its bonds, and after having become responsible for the payment of \$312,000 in receiver's fees, and \$140,000 in employees' wages. After all this she was still liable for the indorsed and direct bonds, and was obliged subsequently to compromise them all. By 1873 the other subsidized railroad companies had defaulted, and she became responsible for the interest on over \$18,000,000 of bonds in addition to the burden of her regular debt. Of course she was obliged to suspend the payment of interest, and her debt thus increased with frightful rapidity from year to year.

(The State made many laudable attempts to meet her increasing obligations, and to provide for the payment of her debts in full. The legislature of 1872 passed an act² establishing a sinking fund.) A tax of one-twentieth of one per cent was authorized to be devoted each year either to the purchase of State bonds or of railroad bonds indorsed by the State. Early in 1873 an act³ was passed increasing the rate of taxation fifty

¹ See *Financial Chronicle* for Jan. 7, 1871.

² *Laws of Alabama* for 1871-72, p. 13.

³ *Ibid.*, 1872-73, p. 4.

per cent. On April 21 of the same year another act was passed designed to reduce very materially the debt itself. It was known as the "4,000 per mile act,"¹ and provided for the exchange of State indorsed railroad bonds for direct bonds of the State, bearing interest at seven per cent in gold, and redeemable in thirty years, the rate of exchange being four thousand dollars of the former for one thousand dollars of the latter. The act further provided that for the first five years after the issue of such bonds, the company to whom they were issued should set apart three-fourths of one per cent of its gross earnings as a sinking-fund for their redemption; and that thereafter five per cent of their gross earnings should be set aside for this purpose. This act was by no means popular, and only three railroads exchanged bonds under it, but by so doing they reduced the State's liabilities \$3,468,000.²

For the final settlement of the difficulty, however, more radical measures were adopted. Dec. 17, 1874, an act³ was passed authorizing the appointment of commissioners to liquidate and adjust all claims against the State arising from

¹ Laws of Alabama for 1872-73, p. 45.

² The three roads were: The South and North Alabama Railroad, the Mobile and Alabama Grand Trunk, and the Savannah and Memphis. The total amount of new bonds issued was \$1,156,000, and the total amount of indorsed bonds retired was \$4,624,000.—Financial Chronicle, June 19, 1875.

³ Laws of Alabama for 1874, p. 102.

bonds issued or indorsed. Three commissioners were accordingly selected. After devoting two years to their task, they reported a plan for the settlement of the debt, which plan was communicated to the legislature by the Governor, and on Feb. 23, 1876, embodied in a funding act.¹ Previous to this a new constitution had been adopted which prohibited the State from engaging in any works of internal improvement, or from lending her credit to any individual association or corporation. It also limited the amount of debt that might be contracted to \$1,000,000.²

The following are the chief features of the funding act:—

1. All the indorsed railroad bonds except those held by the Alabama and Chattanooga Railroad were omitted from the provisions of the act. These, with accrued interest, amounted to \$4,705,000.

2. The ordinary debt of the State was described as class "A." For the principal of this, new bonds were to be exchanged, dollar for dollar, to be dated July 1, 1876, to be payable in thirty years, and to bear interest at two per cent for five years, three per cent for five years, four per cent for the succeeding ten years, and five per cent thereafter until maturity. The authorized bonds of this class aggregated \$7,127,709. The interest

¹ *Laws of Alabama for 1875-76*, p. 130.

² See Art. IV. Sec. 54; and Art. X. Sec. 3 of the constitution of 1875.

which had accrued for a number of years was repudiated.

3. The bonds issued under the "4,000 per mile act" were designated as class "B." The amount recognized was \$1,192,000, in exchange for which new bonds to the amount of \$596,000 were authorized to be issued, to bear interest at five per cent, but to be in other respects like those in class "A."

4. As class "C" were designated the bonds indorsed for the Alabama and Chattanooga Railroad. These amounted to \$5,300,000, and they were authorized to be exchanged for new bonds aggregating in amount \$1,000,000. These bonds were to mature in thirty years, and to bear interest at two per cent for the first five years, and at four per cent thereafter.

5. The indebtedness to the educational fund amounting to \$2,810,670, and five per cent State certificates amounting to \$1,040,000, were to be treated in the same manner as the bonds in class "A."

In payment of the \$2,000,000 of bonds issued directly to the Alabama and Chattanooga Railroad Company, land granted to that company, variously estimated in amount at from 500,000 to 1,200,000 acres, was turned over to the bondholders.

Summarizing the above, we have the following table,¹ showing the amount of the old debt and the

¹ Taken from the *Financial Chronicle* for Jan. 13, 1877.

IN MISSISSIPPI, FLORIDA, AND ALABAMA. 63

amount of new bonds authorized to be issued for their payment:—

	Old debt.	New debt authorized.
Five per cent State certificates	\$1,040,000	\$1,040,000
Educational fund indebtedness	2,810,670	2,810,670
Total of class "A"	7,416,800	7,127,700
Total of class "B"	1,192,000	596,000
Total of class "C"	5,300,000	1,000,000
Total	<u>\$18,759,470</u>	<u>\$12,574,379</u>
Unprovided for except as above explained ¹	2,000,000	
State indorsements left unpro- vided for	<u>4,705,000</u>	
Total old debt (principal) .	<u>\$25,464,470</u>	

If to the difference between these two totals be added the overdue interest on these various classes of bonds, the amount of Alabama's repudiation will be not far from \$15,000,000.

¹ See page 62.

III.

**REPUDIATION IN NORTH CAROLINA
AND SOUTH CAROLINA.**

CHAPTER III.

REPUDIATION IN NORTH CAROLINA AND SOUTH CAROLINA.

North Carolina.

THE State debt of North Carolina was for the most part contracted between the years 1848 and 1870. About the latter date suspicions were aroused concerning the validity of a portion of it; and the result was not only a stoppage of its growth, but a diminution of its amount by repudiation and scaling. In order to understand the grounds for the State's action, it is necessary to note carefully the following analysis of the debt as presented in the treasurer's report for the fiscal year ending Sept. 30, 1871.

1. *The debt contracted previous to the formal declaration of the secession of the State on May 20, 1861.*—The principal of this debt in 1871 was \$8,761,245. Most of it was contracted under authority of a series of acts dating from 1848 to 1858, authorizing the issue of State bonds in aid of railroad, plank road, and canal companies. As security for the bonds thus issued, the State received stock in these enterprises.¹

¹ For a list of these acts, see Tenth Census, vol. vii. p. 567.

2. *Bonds issued during the war for other than war purposes.*—Of these bonds, \$913,000 were dated Oct. 1, 1861, and July 1, 1862, and were made payable in “good and lawful money of the Confederate States.” On this account they had no market value, and the State failed to recognize them, although they were in general terms declared valid by the ordinance of the convention of 1865–66, which declared all debts binding not incurred in aid of the rebellion. To this class also belong bonds to the amount of \$215,000, dated Jan. 1, 1863, and issued in aid of the Chatham Railroad Company.

3. *Bonds issued after the war in pursuance of acts passed before the war.*—The total amount thus issued was \$2,647,000, of which bonds to the amount of \$430,000 were issued to the Wilmington, Charlotte, and Rutherford Railroad, and the residue to the Western North Carolina Railroad. In order to secure the bonds issued to the latter road, the State hypothecated stock which she held in the North Carolina Railroad, upon which there was a previous mortgage. Upon the former road the State was given a first mortgage, which she subsequently sacrificed by giving the bonds of the road the precedence in lien.¹

4. *Bonds issued under authority of the funding acts of March 10, 1866, and Aug. 20, 1868.*²—

¹ See Treasurer's Report for 1874, and Financial Chronicle for Feb. 14 of the same year.

² Laws of 1866, p. 95; and Laws of 1868.

These acts authorized the funding of overdue bonds and coupons. The total amount issued under the first act was \$2,417,400, and under the second \$1,721,400.¹

5. *Bonds issued to the Chatham Railroad Company to the amount of \$1,200,000, and to the Williamston and Tarboro Railroad Company to the amount of \$150,000.*

6. *The "Special Tax Bonds."* — These were issued after the adoption of the constitution of April, 1868, which forbade the issue of any bonds without at the same time providing for the annual interest by the levy of a special tax.² \$16,240,000 of these bonds were issued to six railroads, and stock in these roads was given to the State as security.

The State was responsible for interest on all these bonds at the rate of six per cent per annum. She had expected to pay this heavy annual charge out of the income to be derived from her \$22,000,-000 of stock, but unfortunately the public enterprises, to which aid had been given, were not profit-bearing. With the exception of \$3,000,000, issued by the North Carolina Railroad, this stock never yielded her any income, and could not be sold on the exchanges. The whole burden, therefore, rested upon the shoulders of the people; and that its weight was hard to bear may be deduced

¹ See Tenth Census, vol. vii. p. 567.

² See Art. V. Sec. 5.

from the message of Governor Holden in 1870, in which he stated that the total interest charge, together with the ordinary expenses of the State government, required a tax of \$2,500,000 per annum, which had to be assessed on a total property valuation of \$115,000,000.¹ Under these circumstances it is not surprising that the State constantly defaulted in her interest payments.²

As soon as the weight of this burden was fully appreciated, the people began to ask whence and why it came. The fact that in the five years since the close of the war the State debt had more than doubled, without her assets and income having been correspondingly increased, could not but provoke surprise and suspicion of bad financing, if not of fraud. A little investigation showed that many of these State bonds had been squandered by the railroad companies, and not used for the construction of their roads. In his message³ delivered to the legislature, Nov. 20, 1871, Governor Caldwell stated that the bonds of classes 3 and 5 had been sold for not more than fifty cents in gold, or sixty-five or sixty-six cents in currency, and that "special tax bonds" had been sold in a reckless and gambling manner, and some of them at prices ranging from ten to thirty cents. He also stated

¹ Financial Chronicle for March 4, 1871.

² According to the Governor's message to the legislature, delivered Nov. 20, 1871, unpaid interest to the amount of \$4,987,419.04 had accumulated up to that date.

³ See Financial Chronicle for Dec. 2, 1871.

that there was abundant proof in support of the claim that the proceeds of the bonds had been in many instances misappropriated.¹

The "special tax bonds" came under condemnation first and chiefly. The legislature of 1870 passed three acts² concerning them. The first one, approved Jan. 20, directed the treasurer to pay no more interest on them until he should receive further orders. Previous to this he had collected \$484,859 for this purpose, and had actually paid coupons to the amount of \$208,470.³ The second one was passed on Feb. 5, and provided that bonds then in the hands of the various companies should only be issued after certificates had been presented showing that a certain amount of work had been actually done. A third act, passed March 8, 1870, repealed all the special tax acts, including not only the sections providing for the levy of the special tax, but the whole of the acts in which these sections were contained. It provided that all bonds then in the hands of the officers of the corporations to which aid had been granted should be returned to the treasurer, and appropriated all taxes collected under these special acts to the uses of the State government.

From the passage of this latter act the debt controversy may be said to date. Interest payments

¹ For specific charges, see *Financial Chronicle* for March 4, 1871.

² Laws of 1869 and 1870, pp. 78, 119, and 336.

³ See Note 1 above.

then ceased,¹ and the debt thus increased rapidly. Compromise or repudiation, or both, became each year more and more inevitable. Holders of coupons of some of the "special tax bonds" applied to the courts for a *mandamus* to compel the collection of the special tax for their payment, but without avail. They alleged that the act of March 8, 1870, impaired the obligation of the State's contract with the bondholders, and was, therefore, repugnant to the Constitution of the United States, and that it violated also Section 8, Article V. of the State constitution, which prohibited the use for any other purpose of money collected for the payment of interest on "special tax bonds." The Superior Court of Wake County, however, decided that the agent of the State had exceeded his powers in the issue of these bonds, the roads not having first complied with the required conditions, and that they were for this reason invalid.²

The legislature of 1871 made a laudable attempt to settle a part of the debt by passing an act au-

¹ The State was compelled to pay interest in part on those bonds for the security of which she had hypothecated her stock in the North Carolina Railroad. This stock paid dividends, and the courts decided that the income from this source must be devoted to the payment of the interest on the bonds for which the stock was pledged as security. — *Financial Chronicle* for Jan. 24, 1871.

² An article of impeachment was brought against Governor Holden, based on the charge that he issued \$2,640,000 of these bonds, although the president of the company had not furnished him the certificate required by law. The Governor claimed that the certificate had been presented, but afterwards lost. — *Financial Chronicle*, March 4, 1871.

thorizing the exchange of the stock owned by the State for her bonds; but since most of this stock was practically valueless, this attempt availed nothing. Though the offer to make this exchange was advertised for six months in three New York papers, not a single proposal was received by the State.¹ Litigation in regard to the "special tax bonds," which rendered it uncertain how much, if any, interest on them the State would be obliged to pay, prevented the passage of any compromise act before 1875. The conviction was general that the State could not pay all her debts, and that she could not support her annual interest charge. On this point the treasurer, in his annual report for the fiscal year ending Sept. 30, 1873, said: "Omitting special tax bonds altogether, the interest on the rest of the debt, supposing our accrued interest to be funded, would be \$1,406,663.99 per annum, or one and three-fifths per cent of the real and personal property. Add an amount for county taxation equal to the State government expenses, and we have, outside the towns and cities, two and one-tenth per cent of our property. And in many of the cities and towns the levies for municipal purposes are as large, if not larger. Now add, as the holders of special tax bonds propose, a tax of \$855,090, or three-fourths per cent on the property, and we have a grand total of two and eight-tenths per cent.

¹ See *Financial Chronicle* for Dec. 13, 1873.

"It is manifest that our people cannot and will not pay such enormous levies. Any attempt to enforce it would result in total repudiation."

After the people had become convinced that the payment of the interest on the special tax bonds could not be enforced in the courts, there was nothing to prevent a compromise of the remainder of the debt, and an act¹ was passed with that object in view on March 17, 1875. It provided for the issue of bonds to be known as "consolidation bonds," and to bear interest at two per cent for two years, three per cent for three years, four per cent for five years, and five per cent for twenty years, at which time the principal was to fall due. It provided that these bonds should be exchanged for outstanding bonds of the State at the following rates:—

1. For bonds issued before May 20, 1861, at the rate of forty cents on the dollar.
2. For those issued under the funding acts of March 8, 1866, and Aug. 20, 1868, at the rate of twenty-five cents on the dollar.
3. For those issued since May 20, 1861, in pursuance of acts passed before that time, and for bonds issued to the Chatham Railroad Company, at the rate of twenty-five cents on the dollar.

The total debt recognized by this act was about \$21,500,000; while the debt of the State, all told, including \$13,000,000 of unpaid interest, according to the Governor's message to the legislature in December, 1876, amounted to \$41,846,930.45.

¹ *Laws of 1874-75*, p. 202.

This act was naturally displeasing to the bondholders. Against most of the bonds which were fundable under it, no charge of illegality had been or could be brought, and it was thought that the State was able to pay a much larger percentage of their face value than the act authorized. So few persons signified their willingness to exchange their bonds in accordance with its provisions that the treasurer did not feel justified in going to the expense of having bonds engraved. When the legislature met in 1876, nothing whatever had been done towards carrying the act into execution, and it was evident that this attempt to compromise had failed.

Before making a second attempt it was thought best to consult the bondholders, and to learn, if possible, what terms they would be willing to accept. Accordingly, at the suggestion of Governor Vance, a committee of the legislature was appointed to consult with a committee of the bondholders. A meeting was held in March, and propositions were made by both parties. The legislative committee proposed to settle on a basis of \$6,000,000; in other words, to scale the debt about sixty-six and two-thirds per cent. The bondholders declined this proposition, and proposed a basis of \$10,000,000, or a compromise at about fifty cents on the dollar!¹ Not being able to agree, it was finally decided to leave the matter to a com-

¹ See *Financial Chronicle* for March 10, 1877.

mission consisting of the Governor, Treasurer, Attorney-General, and two members of each branch of the legislature. This commission was expected to consult with bondholders directly, and to decide upon a basis of settlement.

There was not time for the commission to perform its duties before the close of the legislative session of 1877, and, indeed, it never took any steps in the direction of executing its functions. Governor Vance, in his message to the next legislature, stated that inasmuch as the commission was given power neither to make nor to receive any proposition, it was not thought worth while to have any consultation with bondholders.

The legislature of 1879 had the honor and the credit of framing a compromise act which succeeded at least in putting an end to the controversy, and in bringing the matter to a final settlement. The terms offered in the act it passed were no better than those offered by the act of 1875, but the bondholders had by this time learned that they must accept this offer or nothing, and with such an alternative but one choice was sensible. The act¹ in question was passed March 4, 1879, and provided for the issue of bonds to be dated July 1, 1880, to run for thirty years, and to bear interest at four per cent. The conditions under which these bonds were to be exchanged for outstanding bonds of the State were as follows:—

¹ Laws of 1879, p. 183.

1. Bonds issued before May 20, 1861, were to be exchanged for the new bonds at the rate of \$100 of the former for \$40 of the latter.

2. Western North Carolina Railroad aid bonds of 1865 and 1867, Chatham Railroad aid bonds of 1867, Williamston and Tarboro Railroad bonds of 1868, Western Railroad aid bonds of October, 1861, Wilmington, Charlotte, and Rutherford Railroad bonds of 1862, and registered certificates of the literary fund, were to be scaled seventy-five per cent.

3. Bonds issued in pursuance of the funding acts of March 10, 1866, and Aug. 20, 1868, were to be scaled eighty-five per cent.

The act further provided that to the payment of the interest on the new bonds "all State taxes collected from professions, trades, incomes, merchants, dealers in cigars, or three-fourths of all taxes collected from wholesale and retail dealers in spirituous, vinous, and malt liquors" should be devoted. In case the fund derived from these sources should prove inadequate, the treasurer was authorized to devote to this purpose any funds in the treasury not appropriated to other purposes; and if with these funds he was unable to meet the annual interest charge, he was authorized to issue six per cent coupon bonds to run for forty years and to be redeemable in ten years. The total amount of bonds authorized to be exchanged was \$18,892,645; and, according to the above-mentioned rates, the

total amount of new bonds authorized aggregated \$5,006,616. The bonds which were repudiated in toto amounted in principal to \$12,805,000. To this must be added several millions of unpaid interest which had accrued on the recognized and unrecognized bonds, none of which was authorized to be funded.

South Carolina.

Previous to the war South Carolina had contracted a debt amounting to \$3,814,862.91.¹ Up to that time her credit had been excellent, and the management of her finances had been conservative and honest. A war debt of nearly \$3,000,000 was contracted, but was per force subsequently ignored. When the legislature met in 1866 a considerable amount of interest was overdue, and several issues of bonds had matured. To meet these obligations a funding act was passed on Sept. 21, 1866, which was supplemented by an act of Dec. 20, 1866, and which authorized the issue of bonds or stocks, one-half to be payable Jan. 1, 1887, and the other half in 1897, and to bear interest from July 1, 1867, at the rate of six per cent per annum. The same session authorized the issue of bills receivable for which the faith and credit of the State were subsequently pledged.² By these means,

¹ This included some debts contracted in 1861 and 1863 which were not for war purposes, and hence allowed. (Financial Chronicle for March 11, 1871.)

² Acts of 1866, special session, p. 383.

and on account of the inability of the State to pay accruing interest, the debt grew by October, 1867, to nearly five and one-half millions of dollars.¹ During the next three years the obligations of the State increased enormously. To what extent and for what reason it is impossible to state accurately. The records are so confused, and the reports of officials so conflicting, that scarcely any two persons who have investigated the matter have agreed on the exact figure of the debt.

The acts which authorized the increase of indebtedness during the period were the following:—

1. An act² passed Aug. 26, 1868, entitled "An act to authorize a loan to redeem the obligations known as bills receivable of the State of South Carolina." The amount of bonds authorized by this act was \$500,000.

2. An act³ authorizing a loan of \$1,000,000, or so much thereof as might be necessary, to pay interest on the public debt. The bonds to be issued for this loan were to bear six per cent interest, and were to be redeemable in twenty years. The amount of bonds to be issued was not definitely stated, only the amount of the loan being designated. Subsequently a dispute arose regarding the true meaning of the act, the State officials claiming that it authorized the issue of such an

¹ The *Financial Chronicle* for Nov. 11, 1871, gives \$5,407,215 as the exact figure.

² *Laws of South Carolina for 1868*, p. 18.

³ *Ibid.*, p. 19.

amount of bonds as would realize \$1,000,000 in cash, while others claimed that it authorized the issue of such a number of bonds as would aggregate \$1,000,000 in face value.

3. An act¹ passed Sept. 15, 1868, which provided for the issue of bonds dated Jan. 1, 1869, payable in twenty years with interest at six per cent, for the funding of the bills of the Bank of the State of South Carolina. This bank was established in 1812. The State was the only stockholder, and its bills were declared by the courts to be receivable for taxes. The act of 1868 was designed to close up its affairs. Under it bonds aggregating \$1,258,550 were issued.²

4. On the same day, Sept. 15, 1868, another act³ was passed authorizing the granting of aid to the Blue Ridge Railroad Company to the extent of \$4,000,000. Bonds of this amount were delivered to the company, and the financial agent of the State advanced money on them from time to time in pursuance of an act of the legislature authorizing him so to do. The railroad company, however, found itself unable to pay the interest on these bonds; and the State, thereupon becoming liable, agreed to exchange for them revenue scrip to the amount of \$1,800,000, which should be receivable for all dues to the State except taxes for

¹ Laws of South Carolina for 1868, p. 22.

² Financial Chronicle for Nov. 11, 1871.

³ Laws of South Carolina for 1868, p. 26.

interest on the public debt. This issue of scrip was subsequently declared unconstitutional.¹

5. Feb. 17, 1869, an act² was passed entitled "An act to authorize a loan for the relief of the treasury." It provided that \$1,000,000 might be borrowed upon coupon bonds to bear interest at seven per cent from Jan. 1, 1869, and to be redeemable at the pleasure of the State within twenty years. This act, like the one authorizing a million-dollar loan for the payment of interest on the public debt, did not designate the total number of bonds that might be issued.

6. An act³ was passed March 27, 1869, creating the office of Land Commissioner, and making it the duty of this officer to purchase improved or unimproved land suitable for cultivation, and for the purpose of resale in small farms to actual settlers on reasonable credit. Bonds to the amount of \$700,000⁴ were issued under authority of this act.

7. March 23, 1869, an act⁵ was passed authorizing what were called "conversion bonds." It provided for the exchange of any stock of the State for coupon bonds of equal amount, bearing interest at six per cent and payable in twenty years.

¹ See Tenth Census, vol. vii. p. 573; also *Financial Chronicle* for Nov. 11, 1871.

² *Laws of South Carolina* for 1869, p. 182. ³ *Ibid.*, p. 275.

⁴ *Financial Chronicle* for Nov. 11, 1871.

⁵ *Laws of South Carolina* for 1869, p. 241.

8. Another act,¹ passed March 26, 1869, gave the financial agent of the State in New York City authority to pledge State bonds as collateral security for money which he might advance to the State, and for other purposes.

9. Still another act² was passed March 7, 1871, creating what was known as the sterling funded debt. This provided for the issue of six per cent coupon bonds aggregating in amount 1,200,000 pounds sterling, which were to be exchanged for all outstanding liabilities of the State. This act was repealed March 13, 1872.³

The confusion in regard to the amount of bonds which were actually issued under these acts can scarcely be accounted for on any theory which will not reflect upon the honor and integrity of the State officials. Indeed, an abundance of facts point to their corruption and extravagance,⁴ and lend support to the claim made on all sides that the State was being mercilessly fleeced by her own legally appointed guardians.⁵ The State Treasurer's report, the Governor's message to the legisla-

¹ Laws of South Carolina for 1869, p. 258.

² *Ibid.*, 1871, p. 616.

³ *Ibid.*, 1872, p. 193.

⁴ See page 87.

⁵ The "Report of the Joint Special Financial Investigating Committee," p. 259^½, says: "The Taxpayers' Convention; the Governor in his financial 'statement'; the Comptroller General in his reports and ready exhibits; the present committee in its already compiled figures, showing past and present issues; the bonded debt of the State as made out from the books of the State Treasurer and Comptroller General, all fail to compute the actual liabilities imposed upon and withheld from the people by organ-

ture of 1871, and the report¹ of the investigating committee appointed by this legislature, agree that bonds to the amount of \$22,540,000 were printed by the American Bank Note Company for the purpose of carrying these acts into execution. That this amount was largely in excess of what the acts authorized under any possible construction of their meaning was generally admitted, and the reason for having had such a large number printed could not be satisfactorily explained by the officials. They pretended, however, to be able to account for them all. The Governor's message mentioned above, and also the Treasurer's report, entered into an elaborate explanation of their disposition, the upshot of which was that only \$9,314,000 of the total \$22,540,000 had been actually used, \$5,541,000 having been sold, and \$3,773,000 having been put into the hands of the financial agent as collateral security for loans. Of the remaining \$13,026,000, some were accounted for as on hand in the State treasury, others as deposited for safe keeping with the American Bank Note Company, and still others as cancelled and destroyed.²

ized and fraudulent means, while the world holds its breath at the recital of the devices as well as the fearful collusions of the league which, worse than the highwayman, has not only robbed its victim, the State, of all its funds, but of its fair fame and credit."

¹ See Senate Journal of South Carolina for the session 1871-72, pp. 8 and 260; also Tenth Census, vol. vii. pp. 571 and 572, and Financial Chronicle for Dec. 2, 1871.

² These reports may be found in "Reports and Resolutions of the General Assembly of the State of South Carolina at the regular session, 1871-72."

These statements of the officials, however, did not satisfy the legislature and the public. The former believed that there had been an over-issue of bonds, and, early in the session which began Nov. 28, 1871, appointed a committee to investigate the matter. This committee made a report to the House on Dec. 14, of which the following is an extract: "The whole amount of the bonded debt of the State as shown by the report of the Comptroller General on the 31st of October, 1868, was \$5,407,306.27, exclusive of what is known as the war debt. To this amount add the bonds issued to redeem the bills of the bank of the State, \$1,258,550, making the old debt \$6,665,858.27. To this amount was added, during the years 1869 and 1870, \$500,000 in bonds which had been issued to pay interest on the public debt, and had been sold by the Financial Agent, making the bonded debt of the State on the 3d of October, 1870, \$7,665,856.27. There was also at the same time in the hands of the Financial Agent \$1,000,000 of bonds for the relief of the treasury, \$500,000 to pay interest on the public debt, and \$700,000 land commission bonds, making a grand total of \$9,665,856.27, and showing that only \$3,200,000 new bonds have been issued up to the 31st of October, 1870, to wit:—

Bonds to redeem bills receivable	\$500,000
Bonds to pay interest on the public debt	1,000,000
Bonds for relief of treasury	1,000,000
Bonds Land Commission	700,000
	<hr/>
	\$3,200,000

According to the sworn statement of the State Treasurer there are now signed and outstanding \$9,514,000 new State bonds. Deduct from this amount the \$3,200,000 that were out on the 31st of October, 1870, and we find that \$6,314,000 have been signed and put upon the market, which, in the opinion of your committee, is an over-issue."¹

The committee estimated that there were outstanding against the State bonds to the amount of \$20,827,608.20, to which, they said, must be added certain other items and a contingent railroad debt of \$6,787,608.20, making a grand total of \$28,997,608.20. It claimed that the State was really bankrupt and utterly unable to support and pay a debt of this amount; and this claim received some confirmation from the official statement for the year 1872-73, which showed that the appropriations amounted to \$2,418,872, and the receipts from all sources to \$1,719,728.

Other investigations into the financial condition of the State were made by taxpayers' associations and by individuals, which investigations added to the confusion of the public mind, but confirmed the impression made by the legislative committee that outstanding State securities to the amount of millions of dollars were illegal and fraudulent. This impression did not bear fruit in repudiation until the next legislative session, although before that time it had been clearly demonstrated that

¹ Quoted from Financial Chronicle of Dec. 23, 1871.

"conversion bonds" to the amount of nearly \$6,000,000 were outstanding against the State which had never been exchanged for other bonds, as the law required, but which had been first pledged as collateral security for loans, and then, when the State was unable to pay these loans, issued to creditors.

On March 13, 1872, the legislature sought to dispel all doubts on the debt question by passing an act¹ declaring all bonds and stocks included in the treasurer's statement of Oct. 31, 1871, to be legal and valid, and by providing for the levy of a tax annually sufficient to pay the interest on the State debt. The act further provided for the registration of all bonds, and made such registration a condition precedent to the payment of interest.

This act and others having a similar object failed to produce the desired effect. The Governor was obliged to announce in August, 1872, that excessive legislative expenses had absorbed all the money in the treasury, and that the interest falling due could not be paid. The registration operations proceeded very slowly, owing to the exorbitant rates charged, and the Comptroller General refused to levy a tax for the payment of the conversion bonds which had not been exchanged for other bonds in accordance with law. He took as a basis of levy the debt as estimated

¹ *Laws of South Carolina for 1871-72*, p. 278.

by the Taxpayers' Convention in 1871; namely, \$9,865,900.¹ Messrs. Morton, Bliss, & Co., of New York, applied for a writ of *mandamus* to compel the Comptroller to levy the tax provided by law, but the courts granted, not all that was asked for, but a *mandamus* affecting only \$3,000,000 of bonds.² The press of the State gave currency to arguments against the validity of certain classes of bonds, and to the allegations of corruption and extravagance made against the State officials, and created a strong public sentiment in favor of the repudiation of the illegal issues and the scaling down of the whole debt to such a figure as would bring the annual interest charge within the ability of the State to pay.

The legislature which met in October, 1873, partially accomplished the public desire by the passage on Dec. 22 of the so-called "consolidation act."³ This authorized the exchange of outstanding bonds and stocks of the State for new bonds bearing upon their face the words "consolidation bonds, certificates of stock" equal in amount to fifty per cent of the face value of the bonds and stocks surrendered. The new bonds were to be dated Jan. 1, 1874; were to bear interest at six per cent; and to be payable twenty years from the date of the passage of the *act*.

¹ See *Financial Chronicle* for Nov. 23, 1872.

² See *Financial Chronicle* for July 12, 1873.

³ *Laws of South Carolina* for 1873-74, p. 518.

The act further provided that the bonds should bear upon their face the statement that the payment of the interest and the redemption of the principal are secured by the levy of an annual tax of two mills on the dollar upon all the taxable property in the State. In enumerating the various outstanding issues which were exchangeable under this act, only those conversion bonds, amounting to \$1,577,500, were included which were shown by the treasurer's register to have been exchanged for other bonds. The remaining \$5,965,000 of these bonds were declared to have been put upon the market without the authority of the law, and to be null and void. As an inducement to holders of bonds and stocks to exchange them according to the terms of this act, it was provided that no tax should ever be levied to pay either principal or interest of the classes of bonds enumerated in the act so long as they remained in their present form.

This act seemed to meet with the approval of most bondholders. Funding operations proceeded under it with reasonable rapidity, \$7,220,512.65 having been funded up to Oct. 31, 1875. Doubtless all the securities enumerated in the act would have been funded before that date had not the State defaulted in the payment of interest, and charges of illegality been brought against a large number of the bonds already issued. The burden, even, of this reduced debt, added to that

of the extravagant expenditures of the State government, seemed greater than the State was able to bear. The tax rate for 1874 was twelve mills.¹ During this year (1874) the South Carolina Banking and Trust Company failed,² and thus inflicted upon the State a loss of \$250,000 in cash. The taxes which were relied upon to pay the interest on the consolidated bonds were paid largely in bills which had been made receivable for taxes, and which could not be used for debt-paying purposes.³

After the consolidation act had gone into force, a legislative committee reported that coupons which had been clipped from bonds before their sale, and which should have been cancelled, had been transferred to third parties and funded into consolidated bonds. Charges of illegality were also brought against the bonds issued for the relief of the treasury, against a portion of those issued to pay interest on the public debt, against those issued for the redemption of bills receivable, and others which had been authorized to be exchanged for consolidation bonds, and many of which had been so exchanged. Another investigation was demanded by the public, and was provided for by a joint resolution adopted by the legislature June 8, 1877.⁴

¹ Supplement of Financial Chronicle for Aug. 28, 1875.

² See Comptroller's Report for 1875; also Financial Chronicle for Sept. 4, 1875.

³ Financial Chronicle for July 8, 1876.

⁴ Laws of South Carolina for 1877, p. 318.

In accordance with this resolution a committee was appointed with power to ascertain whether there were in the State Treasurer's office, on file as vouchers, cancelled bonds, coupons, and certificates of stock of the issues described in the act of 1873, which were issued in accordance with law, and whether there were any which were unlawfully or otherwise improperly issued. The commission was in session for several months, and after a very careful investigation reported that \$5,184,062 (representing \$2,592,031 of the consolidated bonds) of vouchers which had been issued in accordance with law had been found, and that vouchers amounting to \$3,608,707 (representing \$1,804,358.50 of the consolidated bonds) had been found which had been illegally issued. After listening to the report of this commission, the legislature on March 22, 1878,¹ established a "Court of Claims" to examine into and decide concerning the consolidated bonds alleged to be illegal. A number of test cases were brought before this court, and subsequently appealed to the Supreme Court of the State, whose decision on the contested points was as follows: That all bonds issued under the act entitled "An act to reduce the volume of the public debt, and to provide for the payment of the same" were valid obligations of the State of South Carolina except as follows:—

"1. Such as were issued in exchange for bonds

¹ Laws of South Carolina for 1877-78, p. 670.

under the act entitled ‘An act to authorize a loan for the relief of the treasury,’ or for the coupons of such bonds;

“2. Such as were issued in exchange for the second issue of bonds under an act entitled ‘An act to authorize a State loan to pay the interest on the public debt,’ or the coupons of such bonds;

“3. Such as were issued in exchange for those conversion bonds which were issued in exchange for either of the two classes of bonds last mentioned.”¹

In regard to the illegality of the bonds for the relief of the treasury, issued under authority of the act of Feb. 17, 1869, the court said: “This act we regard as liable to two constitutional objections:—

“1. It purports to create a debt which was not ‘for the purpose of defraying extraordinary expenditures;’ and

“2. The debt therein sought to be created is not ‘for some single object,’ and such object is not ‘distinctly specified therein.’ . . . Money borrowed for the relief of the treasury might and would be applied to as many different objects as there were demands upon the treasury. We think, therefore, that this act clearly violates both the clauses of the constitution above referred to,² and . . . every

¹ 12 S. C. 204.

² The following is the article of the constitution upon which the decision was based:—

Art. IX. Sec. 7.—For the purpose of defraying extraordinary expenditures, the State may contract public debts; but such debts

bond, together with its coupons, issued under authority of this act is absolutely void, even in the hands of a *bona fide* holder, because issued without any authority whatever, and hence every consolidation bond resting upon such bonds or coupons is, to the extent that it does rest upon such bonds or coupons, not a valid debt of the State of South Carolina" (12 S. C. 288).

The ground upon which the second issue of bonds for the payment of interest on the public debt was declared illegal was that no such issue was authorized by the act. It was held that the Governor might have issued bonds sufficient to yield \$1,000,000 in cash, but that he had no authority to make a second issue of a new order of bonds.¹ This decision rendered \$197,000 of bonds invalid.

At the session of the legislature succeeding the rendition of these decisions, a special commissioner² was appointed for the purpose of determin-

shall be authorized by law for some single object to be distinctly specified therein; and no such law shall take effect until it shall have been passed by the vote of two-thirds of the members of each branch of the General Assembly, to be recorded by yeas and nays on the journals of each house respectively; and every such law shall levy a tax annually sufficient to pay the annual interest of such debt.

¹ This issue had printed upon the face the words "issued under act approved Aug. 26, 1868," while the first issue had printed upon the face of each bond the words "loans to pay interest on the public debt."

² Laws of South Carolina for 1879, p. 221.

ing what consolidation bonds were valid, and what invalid, in accordance with the principles laid down by the court. This commissioner rendered a report Nov. 26, 1880, in which the total invalidity of consolidation bonds and stock was fixed at \$1,126,762.99.¹ At the same time² that the appointment of the special commissioner was authorized, an act was passed for the final adjustment of the consolidated debt. It was entitled "An act to provide for the settlement of the consolidated debt of the State in accordance with the decision of the Supreme Court of South Carolina."³ It provided that every holder of consolidated bonds or stock or of the interest coupons of the same, due and unpaid before July 1, 1878, reported by the special commissioner as wholly or partially valid, might exchange the same for new consolidated bonds bearing interest at six per cent, and equal in amount to the valid portion of the bond, stocks, and coupons surrendered. The act also provided for the funding of old securities still outstanding.

This act constituted a final settlement of the controversy, and reduced the debt to a figure which the State could support, and which she will doubtless be ultimately able to pay.

¹ Tenth Census, vol. vii. p. 578.

² Dec. 23, 1879.

³ Laws of South Carolina for 1879, p. 104.



IV.

REPUDIATION IN GEORGIA, LOUISIANA, AND ARKANSAS.

CHAPTER IV.

REPUDIATION IN GEORGIA, LOUISIANA, AND ARKANSAS.

Georgia.

THE year 1868 marks the beginning of an epoch in the political and industrial history of Georgia. It was the year in which she complied with the requirements of the reconstruction act, and was re-admitted to the councils of the nation on an equality with the other States ; and it was the year in which she entered vigorously upon the prosecution of a plan for the revival of her industries, and the development of her resources by a system of internal improvements. Her industries — up to this time chiefly agricultural — had not been conducive to large accumulations of wealth, and the capital which had been saved was greatly reduced by the calamities of preceding years. In order to secure the means necessary to her new industrial undertakings, therefore, she was compelled to resort to the capital of foreign countries, or of the Northern States ; and the great problem of how to attract this in the quantities desired, early confronted her statesmen and politicians. It is not surprising that the use of the State's credit for this purpose was contemplated. The federal

government and nearly every State of the Union were subsidizing railroads; and the traditions of the South suggested the use of the credit of the State for purposes for which the capital of private individuals was inadequate. Moreover, the State had herself adopted this policy in 1836, when she passed an act providing for the construction of the Western and Atlantic Railroad; also, in 1856, when she invested \$1,000,000 in the Atlantic and Gulf Railroad; and again a few years later, when she indorsed the bonds of several roads.

The framers of the constitution of 1868, foreseeing the needs and very likely the policy of the State, prescribed the conditions under which public aid could be granted to corporations. Article III. Section 6, paragraph 5, reads as follows: "The General Assembly shall pass no law making the State a stockholder in any corporate company; nor shall the credit of the State be granted or loaned to aid any company without a provision that the whole property of the company shall be bound for the security of the State, prior to any other debt or lien, except to laborers; nor to any company in which there is not an equal amount invested by private persons; nor for any other object than a work of public improvement."

The legislatures of 1868, '69, and '70 satisfied the most ardent advocates of the promotion of public improvement by State aid. According to the report of the State Treasurer for 1871, aid was

granted during these years to over thirty railroads, in the form of bonds issued or indorsed, aggregating about \$8,000,000 in face value.¹ Among these issues were the bonds afterwards repudiated.

The government of the State during these years was under the control of the "carpet baggers," and, in consequence, was suspected by the orthodox democrats of dishonesty, extravagance, and corruption in most of its acts. Rumors were current to the effect that gigantic frauds had been committed in the issue and indorsement of the bonds in aid of railroads, and investigation proved that they had some basis, at least, in fact. Governor Bullock, against whom attacks were chiefly directed, found political life more and more intolerable, and finally, on Oct. 30, 1871, resigned, and, it was alleged, fled the State for safety. He strenuously denied this allegation, but could not prevent the people from interpreting his resignation as a confession of guilt.

The State legislators of 1871 were animated by a spirit of criticism and reform, and were backed by a strong public opinion. Under an act entitled "An act to protect the people of the State of Georgia against illegal and fraudulent issues of bonds and securities, and for other purposes connected with the same,"² a committee was appointed for

¹ The total amount of bonds authorized was about \$30,000,000.—*Financial Chronicle* for March 25, 1871.

For a list of the roads aided, and the amount of aid per mile authorized in each case, see *Tenth Census*, vol. vii. p. 583.

² *Georgia Laws for 1871-72*, p. 14.

the purpose of ascertaining the amount and the history of the bond issues of the State. The report of this committee led to the appointment of four others for the more minute investigation of the subject. Their reports revealed a number of irregularities which were deemed by the legislature of 1872 to be serious enough to justify repudiation.¹ These concerned (1) the indorsement of the bonds of the Bainbridge, Cuthbert, and Columbus, the Cartersville and Van Wirt, the Cherokee Valley, and the Brunswick and Albany Railroads; (2) the State gold bonds issued under an act of Oct. 17, 1870, in aid of the Brunswick and Albany; (3) the currency bonds issued under an act of Aug. 27, 1870; and (4) the quarterly gold bonds issued under an act of Sept. 15, 1870.

The act in aid of the first-mentioned road was passed on March 18, 1869,² and provided that the State's indorsement might be placed upon the first mortgage bonds of the road on the same terms as those granted the Air Line Railroad Company; namely, after twenty miles of road had be encompleted. The investigation showed, according to the report of the committee, that before a foot of the road had been built Governor Bullock indorsed the bonds,³ and in a letter to the State Secretary directed him to complete the indorsement by his

¹ Georgia Laws for 1872, pp. 5 and 8.

² *Ibid.*, 1869, p. 59.

³ Governor Bullock made this indorsement in New York while on his way to California.

signature as soon as the twenty miles were completed; and that upon the strength of this indorsement and letter, the bonds were negotiated. The road was never built, and the bonds, though doubtless in many cases in the hands of innocent holders, represented no advantage whatever to the State, and her first mortgage lien upon property which had no existence furnished her, of course, no security whatever. In view of these facts the legislature declared the State's indorsement of these bonds to be null and void, and forbade their payment. The bonds thus repudiated amounted to \$600,000.

The Cartersville and Van Wirt Railroad Company was authorized by the act of March 12, 1869, to present to the Governor for indorsement bonds not to exceed in the aggregate \$12,500 per mile of the road when completed. Bonds were presented and indorsed to the amount of \$275,000. After the investigation it was claimed that the State's indorsement had been put upon the bonds before an equal amount had been invested in the road by private parties, and also before a sufficient amount of road had been completed, and that the constitution having thus been violated, the State was not bound in any way to guarantee the payment of the interest or principal of the bonds.¹

¹ The evidence upon which the State chiefly relied in proving her case was brought out in the case of *Henry Clews & Co. v. the Cartersville and Van Wirt Railroad*, in which case the facts were affirmed by "Pat" Calhoun, counsel for the State, but were denied by Hon. U. S. Hammond,

The Cherokee Railroad was the Cartersville and Van Wirt under a new name. Finding itself in need of money with which to complete the road, the company applied to the legislature, even though the State had indorsed all the bonds for the Cartersville and Van Wirt that the act authorized. The legislature evidently regarded the Cherokee and the Cartersville and Van Wirt as different roads, and granted the aid asked for. \$300,000 of bonds were indorsed, but the indorsement was declared illegal, and hence null and void, by the legislature of 1872.

The Brunswick and Albany was an old road which the Confederate government had confiscated during the war. After the return of peace it was sold at auction, and the company was reorganized under a new charter. The road having suffered considerable damage during the war, and the Confederate government having guaranteed protection to all private property in the State, the company claimed that the legislature was under obligations to make good the damage. On the strength of this argument the bonds of the road were indorsed to the amount of \$3,300,000, and \$1,800,000 of State bonds were issued in its favor. The legislature of 1872 did not agree with its predecessor, and declared that there was no authority in the laws for granting aid under such circumstances, and that the indorsement was, therefore, null and void.

The currency and gold bonds authorized by the acts of Aug. 27 and Sept. 15, 1870, were issued for the purpose of redeeming overdue bonds and coupons, and those which might fall due in the immediate future, and for such other purposes as the legislature might direct. Of the former the legislature declared null and void \$2,000,000, and of the latter, \$102,000; namely, those held by Henry Clews & Co. of New York. The chief reason assigned for this repudiation was the alleged fact that these bonds had been pledged as security for loans without the authority of law.

Investigations similar to the above were resumed by the legislature of 1875, and a new batch of acts of repudiation was passed. The bonds of the Macon and Brunswick Railroad were the first to suffer. The legislature of 1872 had declared the State's indorsement on these bonds to be valid and binding, but in 1875 the Governor discovered that with regard to a portion of them it was illegal. His discovery was doubtless aided by the fact that the road had defaulted on the interest which fell due on July 1, 1873. At that time the State recognized the obligation of her indorsement by foreclosing her mortgages and taking possession of the property of the road. In his message to the legislature of 1875¹ the Governor stated that the bonds in question had been indorsed under authority of two acts,

¹ See Senate Journal of Georgia for the session commencing Jan. 13, 1875, p. 16.

one passed in 1866 and the other in 1870. The latter act¹ authorized the indorsement of bonds to the extent of \$3,000 per mile, and was intended as a supplement to the preceding one, the company having claimed that the road had cost them more than they had expected. It was claimed by the Governor that this second indorsement was unconstitutional, because the security of the State was of necessity a second mortgage, that of the first indorsement having the precedence. The legislature agreed with the Governor, and repudiated the State's obligation on the bonds of 1870, the aggregate face value of which was \$600,000.² An act passed Feb. 27 of the same year declared null and void the State's indorsement on the bonds of the Alabama and Chattanooga Railroad.³ The reason for this was the same as that assigned in the case just mentioned; namely, that the indorsement was placed on second mortgage bonds, and was, therefore, forbidden by the constitution. It was declared that the bonds on their face expressly recognized the existence of a prior and first mortgage lien on the company's property. This same legislature⁴ passed an act on March 2, declaring that divers bonds then in circulation had been paid, and then illegally and fraudulently reissued and negotiated, and requiring the registration of such bonds by the treasury. It was enacted that all bonds not so

¹ Georgia Laws for 1870, p. 336.

³ *Ibid.*, 1875, p. 13.

² *Ibid.*, 1877, p. 11.

⁴ *Ibid.*, p. 12.

registered before Aug. 1, 1875, should be deemed illegal and not binding on the State. It was further enacted that previous to the registration the bondholder must establish "continuous ownership for the last five years by the affidavit of each *bona fide* holder through whose hands they shall have passed, showing from whom the bonds were bought, and to whom they were sold, giving number of bond presented, date of issue, etc."

The legislature of 1876¹ put upon the list of repudiated bonds still another issue dating back to an earlier period than any of the preceding ones. \$375,000 of bonds had been authorized by an act of Feb. 17, 1854, to be exchanged for outstanding bonds of the Central Bank. It was claimed by this legislature that on account of a disagreement between the holders of the bonds of this bank and the Governor, the exchange was never made, but that in November, 1864, the State bonds intended for this purpose were taken from the treasury and negotiated. An act was accordingly passed on Feb. 25 declaring these null and void.

The work of repudiation accomplished by these various acts was secured for all time, first, by a constitutional amendment, and then by a new constitution. The amendment adopted by the legislatures of 1875 and 1877, and ratified by the people in May, 1877, reads as follows: "Neither the

¹ Georgia Laws for 1876, p. 9.

General Assembly nor any other authority or officer of this State shall ever have power to pay or recognize as legal, or in any sense valid or binding upon the State, any direct bonds, gold bonds, or currency bonds, or any other bonds, guarantees, or indorsements heretofore declared to be illegal, fraudulent, or void by act or resolution of the legislature of the State, or that may be declared illegal, fraudulent, or void by act or resolution of the legislature originating this amendment; viz., the State gold bonds issued under the act of Oct. 17, 1870, in aid of the Brunswick and Albany Railroad Company; the currency bonds issued under the act of Aug. 27, 1870; the quarterly gold bonds issued under the act of Sept. 15, 1870, which are enumerated in the act of Aug. 23, 1872; the indorsement of the State on the bonds of the Brunswick and Albany Railroad Company, made under the act of March 18, 1869; the indorsement of the State on the bonds of the Cartersville and Van Wirt Railroad Company, and of the Cherokee Railroad Company; the indorsement of the State upon the bonds of the Bainbridge, Cuthbert, and Columbus Railroad Company, and all other bonds, guarantees, or indorsements declared illegal, fraudulent, or void as herein provided."

In the new constitution, ratified by the people Dec. 5, 1877, Article VII. Section 9, we find these words confirming the above amendment, and forbidding any future repeal of the repudiation

acts: "The General Assembly shall have no authority to appropriate money, either directly or indirectly, to pay the whole or any part of the principal or interest of the bonds or other obligations which have been pronounced illegal, null, and void by the General Assembly, and the constitutional amendments ratified by the people on the first day of May, 1877."

Louisiana.

Before the Civil War the State of Louisiana had contracted and partially paid a very large debt. A report of the finance committee of the House of Representatives of the State, presented March 11, 1861, shows that a debt of \$23,309,246.43 in 1840 had been reduced by 1861 to \$10,099,074.32. This debt consisted of liabilities for banks which the State had assisted, and which had been placed in liquidation; of bonds issued in aid of railroads, for the construction of levees, for seminary and school funds, and for a charity hospital; and of bonds to the credit of various trust funds; and of bonds issued for the aid of the city of New Orleans. Between 1861 and 1865 the debt was slightly increased for purposes not connected with the Civil War, the auditor's report for the year ending Dec. 31, 1865, placing it at \$11,182,377.14.

During the next five years this debt was more than doubled, and laws were passed whose execu-

tion subsequently more than trebled it. Under authority of acts passed in 1866,¹ bonds to the amount of \$1,000,000 were issued for the purpose of constructing levees, and others aggregating \$997,500 were issued for the purpose of paying overdue bonds and coupons. In the following year \$4,000,000² more of bonds were issued for levees, and in 1869 and in 1870³ nearly \$7,000,000 more were issued for the same purpose, for the State penitentiary, and in aid of the Mississippi and Mexican Gulf Ship Canal Company. The total State debt at the close of the fiscal year ending Nov. 30, 1870, was \$22,589,628.41.⁴

The legislature of 1870⁵ was exceedingly prodigal of the State's credit. It authorized the issue of bonds to a number of railroad, canal, and navigation companies on conditions which made possible an enormous increase of the State's already heavy liabilities, and that, too, in face of the fact that the expenditures of the State for that year exceeded its net income by \$1,296,723.29.⁶ This deficit was more than covered by the balance in the State treasury at the beginning of the year, and by the delinquent taxes of previous years collected during the period; but it nevertheless

¹ Laws of Louisiana for 1866, p. 6.

² *Ibid.*, 1867, p. 213.

³ *Ibid.*, 1870, p. 63.

⁴ See *Financial Chronicle* for March 18, 1871.

⁵ Laws of Louisiana for 1870, pp. 7, 21, 60, 174.

⁶ See *Financial Chronicle* for March 18, 1871.

indicated, in connection with the fact that the tax rate for State purposes then amounted to fourteen and one-half mills,¹ that the State was in no condition to bear a heavier burden of indebtedness. These acts were also passed with full knowledge of an amendment to the constitution, adopted Dec. 15, 1870, limiting the debt of the State to \$25,000,000. The legislature of 1871 contracted a large number of miscellaneous debts, and authorized the issue of bonds to the amount of \$2,500,000 to the New Orleans, Mobile, and Texas Railroad Company. These acts, together with bonds loaned to banks and those issued under authority of acts passed prior to 1871 (\$11,489,000), made the total liabilities of the State \$41,733,752.²

This rapidly increasing debt became the cause of much anxiety and discontent throughout the State, to say nothing of distress. In April, 1871, a number of property owners and taxpayers in the city of New Orleans published a proclamation to investors and the public generally, declaring it to be their belief that the last legislature had exceeded its powers, and that all the debts contracted in excess of \$25,000,000, were unconstitutional and therefore void.

The taxes had increased steadily from year to year. In 1872 in the city of New Orleans they amounted to fifty-one and one-half mills on the

¹ See *Financial Chronicle* for March 18, 1871.

² See *Tenth Census*, vol. vii. p. 598.

dollar, twenty-one and one-half mills of which were devoted to State purposes.¹ The amount collected throughout the State in 1868 was \$1,266,006; in 1869, \$2,392,809; in 1870, \$3,082,533; and in 1871, \$3,658,879.² Besides this there were delinquencies amounting to several millions of dollars. To add to this discontent a government came into power in 1872 which was declared to be a usurpation, and which a committee of Congress, after thorough investigation, subsequently decided had not been the choice of the people.³ This government, however, was supported by the military arm of the nation, and had to be endured.

The first means of relief employed by the people was an appeal to the courts. Injunctions restraining the payment of coupons from those bonds thought to be illegal were sought and obtained, and a decision of the court was given to the effect that bonds issued under acts which had been passed since the adoption of the amendment to the constitution limiting the debt to \$25,000,000 were unconstitutional and void; but that bonds issued since that date, but under authority of acts passed before it, were binding upon the State.⁴

¹ Governor Kellogg, in his message to the legislature of 1875, stated that in some parishes the taxes had reached seventy mills on the dollar.

² See *Financial Chronicle* for May 24, 1879.

³ See House Misc. Doc. No. 211, Forty-second Congress, 2d session.

⁴ See State *ex rel.* Saloman & Simpson v. Graham, Auditor, 23 La. 402; also 28 La. 249.

Previous to the legislative session of 1874 the Governor appointed a citizens' committee of seven persons to investigate the State debt, and in his message delivered to the legislature in January, 1874, he stated their conclusions in substance as follows : —

1. That at the time of the adoption of the constitutional amendment limiting the State debt to \$25,000,000, the obligations of the State, including the then existing contingent liabilities, amounted to upwards of \$42,000,000.
2. That liabilities created since the adoption of the amendment, amounting to \$8,087,500, were null and void.
3. That contingent liabilities amounting to \$13,003,000 created prior to the amendment have all, or nearly all, lapsed or become forfeitable by neglect, and may be declared null and void.
4. That the issue of \$2,500,000 of bonds in payment of the subscription to the stock of the New Orleans, Mobile, and Texas Railroad Company, under the act of April 20, 1871, was in violation of the constitutional amendment and, therefore, null and void.
5. That all illegal debts should be repudiated, and that the remainder should be compromised on a basis which will reduce it in amount to a sum not exceeding \$12,000,000.¹

¹ Financial Chronicle for Jan. 17, 1874; also message of Governor William P. Kellogg, Documents of the Legislature of 1874, p. 3.

The legislature which met in this year came from the people impressed with the necessity of a reduction of the debt and of a diminution of the burden of taxation ; but they were not prepared to accept the recommendations of the committee whose report the Governor presented in his message. The result of their deliberations was the passage of an act¹ on Jan. 24, 1874, which provided for the funding of the outstanding obligations of the State, including the floating debt, into new bonds payable in forty years from Jan. 24, 1874, and bearing seven per cent interest. The exchange was to be made by a board of liquidation, consisting of the Governor, Lieutenant-Governor, Auditor, Treasurer, Secretary of State, and Speaker of the House of Representatives, at the rate of sixty cents in new bonds,— called consolidated bonds,— for one dollar in outstanding bonds and all valid warrants. The consolidated bonds to be thus created were to be limited in amount to \$15,000,000, and it was provided that prior to the year 1914 the entire State debt should never be increased, either directly or indirectly, beyond that amount.

The board of liquidation found the task of executing this act no easy matter. The bondholders of New York protested against it, citing in proof of the ability of the State to pay her debts in full the glowing statements of the Governor, relative to her financial condition,² while the London bond-

¹ Laws of Louisiana for 1874, p. 39.

² See *Financial Chronicle* for Feb. 7, 1874.

holders refused to accept the terms offered in the act, and declared it to be a proposition to confiscate forty per cent of the capital and interest of their bonds.¹ The board had, besides, the difficult task of deciding what were valid outstanding bonds and warrants. Scarcely had it entered upon its duties before it was enjoined by the courts, upon the application of various citizens, from funding those bonds concerning whose constitutionality and legality the public were suspicious. The legislature of 1875 heeded these suspicions, and in an act² passed May 19, declared eighteen issues of bonds to be "questioned and doubtful," and prohibited the board of liquidation from funding them into consolidation bonds before they had been tested by the courts and declared valid. Of these eighteen, ten were bonds issued in aid of railroads, three were bonds issued for the construction of levees, and the remaining five were respectively,—the issue of bonds for the relief of the treasury, the Free School Fund bonds, those issued in aid of the Mississippi and Mexican Gulf Ship Canal, those issued in aid of P. J. Kennedy, and those which were claimed to have been issued for the redemption of State certificates. The total amount aggregated nearly \$14,000,000.

In pursuance of the provisions of this act, the validity of most of these issues was tested in the

¹ See resolutions adopted in London, July 29, 1874, and quoted in the *Financial Chronicle* for Aug. 15, 1874.

² See *Laws of Louisiana for 1875*, p. 111; also Appendix No.

courts.¹ The levee bonds, amounting to nearly \$8,000,000, were pronounced valid, as were also the bonds issued in aid of the Mississippi and Mexican Gulf Ship Canal to the amount of \$124,000.² Bonds to the amount of \$2,500,000 issued to the Mobile and Chattanooga Railroad Company were pronounced unconstitutional on the ground that the constitutional limit of the State debt had been reached before the passage of the act which authorized their issue. The result of all the litigation was that the larger part of the debt declared to be "questioned and doubtful" was funded into consolidation bonds, much to the displeasure of a large party of the people; and though the bonded debt of the State was reduced by the act of 1874 to about \$12,000,000, the people were not satisfied, chiefly because they believed that a large part of the debt which had been funded was illegal and unconstitutional.

Another cause of dissatisfaction with this funding act was the high rate of interest—seven per cent—which it authorized to be paid. It was thought that this was unjust, and, moreover, more than the State could afford to pay. However this may be, it is certain that the State found herself unable to pay the interest on the consolidated bonds as it fell due. In 1874 the treasurer was obliged to leave interest to the amount of \$66,558.71 unpaid;

¹ See the following cases: 27 La. 577; 28 La. 219, 249, and 393.

² See *Financial Chronicle* for Nov. 25, 1876.

in 1875 the unpaid interest account amounted to \$63,729.31; in 1876, to \$153,458.25; in 1877, to \$114,837.48; and in 1878, to \$181,148.52.¹ A reference to the delinquent tax list of these years shows that the treasurer's inability to pay was caused either by the unwillingness or the inability of the people to pay the five and one-half mill tax assessed for this purpose. Of the total amount of this tax assessed, \$351,890 remained uncollected in 1874; \$339,890 in 1875; \$387,141 in 1876; \$221,883 in 1877; \$272,371 in 1878; and \$673,392 in 1879.² Had these amounts been collected promptly, the treasurer would have had a small surplus each year which could have been used as a sinking fund for the redemption of the principal of the bonds.

The government's evident inability to meet its interest obligations, and the general dissatisfaction with the funding act of 1874, led to the calling of a constitutional convention in 1879, which, after a long and stormy debate on the debt question, finally adopted a "debt ordinance" reducing very greatly the interest on the consolidated bonds. This was adopted by a large majority of the people, and thus became a part of the fundamental law of the State. The text of the ordinance is as follows:—

ARTICLE 1. Be it ordained by the people of the State of Louisiana in convention assembled, that the interest to be paid on the consolidated bonds

¹ See Treasurer's Reports for the years mentioned; also Financial Chronicle for Jan. 11, 1879.

² See Financial Chronicle for Sept. 13, 1879.

of the State of Louisiana be and is hereby fixed at two per cent per annum for five years from the first day of January, 1880, three per cent per annum for fifteen years, and four per cent per annum thereafter, payable semi-annually; and there shall be levied an annual tax sufficient for the full payment of said interest, not exceeding three mills, the limit of all State tax being hereby fixed at six mills; provided the holders of consolidated bonds may, at their option, demand in exchange for the bonds held by them bonds of the denomination of five dollars, one hundred dollars, five hundred dollars, one thousand dollars, to be issued at the rate of seventy-five cents on the dollar of bonds held and to be surrendered by such holders, the said new issue to bear interest at the rate of four per cent per annum, payable semi-annually.

ART. 3. Be it further ordained, that the coupons of said consolidated bonds falling due on the 1st of January, 1880, be, and the same is hereby, remitted, and any interest taxes collected to meet said coupons are hereby transferred to defray the expenses of the State government.

Unfortunately this amendment did not put an end to the controversy. It was destined to rage for five years more. Bondholders who had already submitted to the sealing of their claims forty per cent were loath to endure another reduction of twenty-five per cent. Though they were requested to present their bonds to have the new interest

regulations stamped thereon, or to exchange them at seventy-five cents on the dollar for new four per cent bonds, few of them complied. The interest money collected for the purpose of carrying out the provisions of the debt ordinance accumulated in the treasury, and there was talk of investing it in United States bonds. Various attempts were made by the bondholders to compel the payment of the interest as provided for in the act of 1874. The treasurer was temporarily enjoined from devoting the money which had been collected to pay interest to the general purposes of the State, but the courts did not sustain the injunction. Vain attempts were also made to compel the payment of the interest falling due on Jan. 1, 1880, which the debt ordinance remitted.

A unique attempt to compel the State to pay her obligations in full was made by the States of New York and New Hampshire.¹ Inasmuch as the eleventh amendment prohibits individuals from bringing suits against States in the federal courts, these two States attempted to give their citizen bondholders redress against the repudiating State of Louisiana by taking their obligations upon themselves, and suing for their enforcement in the Supreme Court of the United States. That tribunal, however, decided that this action was an evasion of the eleventh amendment, and, therefore, not permissible. Several other cases, the object of

¹ See 108 U. S., 76.

which was to enforce the provisions of the funding act of 1874, were brought before the Supreme Court and decided in March, 1883.¹ It was held that the debt ordinance was a violation of the contract made with the bondholders in 1874, but that there was no remedy provided for compelling the State to do what she had refused to do. The following are the words of Chief Justice Waite: "Neither was there when the bonds were issued, nor is there now, any statute or judicial decision giving the bondholders a remedy in the State courts or elsewhere, either by *mandamus* or injunction against the State in its political capacity, to compel it to do what it has agreed should be done, but what it refuses to do."

Baffled in all their attempts to obtain their rights in the courts, the bondholders proposed to the State another compromise. They asked that, instead of two per cent for five years, three per cent for fifteen years, and four per cent thereafter, the State give them four per cent after the first five years. To this proposition the legislature agreed in June, 1882, by the passage of an amendment² to the constitution providing that interest on the consolidated bonds be fixed at two per cent for the first five years and at four per cent thereafter. The legislature also provided that in the interim, before the amendment could be voted upon by the people,

¹ See 108 U. S., 76.

² Laws of Louisiana for 1882, p. 96.

interest should be paid on the consolidated bonds at the rate of two per cent per annum. In May, 1884, the people ratified this amendment by a fair majority, and it became the basis of the final settlement. Proposed by the bondholders themselves, they could not but accept it. The legislature of 1884 passed revenue bills and made appropriations necessary for the payment of the interest on this basis, and thus provided for the execution of the new amendment.¹

Arkansas.

Arkansas entered the Union as a State in 1836 with a population of about fifty thousand souls, who possessed all told an amount of wealth not exceeding \$15,000,000. Her ambition, however, was equal to that of the most populous and richest States, and she was not backward in undertaking enterprises which her limited financial resources hardly warranted. The scarcity of capital and the example of other States induced her in 1837 and 1838 to charter two banks, known as the Bank of the State of Arkansas and the Real Estate Bank, and to secure for them a capital fund by the issue of bonds amounting to \$2,827,000.² These banks followed the course of sister institutions in other

¹ Laws of Louisiana for 1884, p. 62.

² Before the failure of these banks the State had issued bonds all told to the amount of more than \$3,500,000.—*Tenth Census*, vol. vii. p. 603.

States, and speedily became insolvent, leaving the payment of these bonds, with accumulated interest, as a legacy to the State. Being scarcely able, with the help of the surplus revenue which had been distributed by the federal government, to pay her current expenses, she was obliged to allow the interest on these bonds to accumulate from year to year, and thus to drift into a slough of indebtedness from which she subsequently found it extremely difficult to extricate herself. By 1869 this portion of her debt had increased by the accumulations of interest to \$4,225,000.¹

In the years immediately succeeding the war, the financial condition of the State showed but little, if any, improvement over that of the early years of her history. A large floating debt had accumulated, owing to the insufficiency of the annual revenues, and a large amount of State scrip was issued, which, being receivable for taxes, was the cause of great financial embarrassment in after years. The bonds issued in aid of the Real Estate Bank became due in 1861, but of course could not then be paid, and were allowed to run on and the interest to accumulate. Those issued in aid of the State Bank fell due in 1868. In order to meet these obligations the legislature of 1869, on April 6, passed a funding act² which

¹ These figures were taken from the *Financial Chronicle* for Oct. 2, 1869. The Tenth Census, vol. vii. p. 603, puts the figure of this portion of the debt in October, 1868, at \$4,993,503.19.

² *Acts of Arkansas for 1868-69*, p. 115.

provided for the issue of new bonds in exchange for those then due and their unpaid coupons, one-half to be dated July 1, 1869, and the other half Jan. 1, 1870, payable in thirty years with interest at six per cent. By January, 1873, new bonds to the amount of \$3,050,000 had been issued under authority of this act.¹

The same legislature passed an act² authorizing the loan of the State's credit to railroads. It provided that the railroads should pay the interest on the bonds loaned them, and, in case they defaulted, the State was authorized to take possession of them and, if need be, to sell them for her reimbursement. Under authority of this act, railroad bonds were issued to the amount of \$5,300,000.³ The history of these bonds is merely a repetition of the history of similar issues by other States. All the railroads aided defaulted in the payment of interest in 1873, and they were temporarily handed over to receivers appointed at the request of the State treasurer. In May, 1874, however, the legislature repealed the law authorizing the roads to be put into the hands of receivers, and they drifted back into the possession of their original owners, leaving the State under obligations to pay the interest and principal of the \$5,300,000 of bonds. Being entirely unable to meet the increased interest

¹ See Tenth Census, vol. vii. p. 603.

² Acts of Arkansas for 1866-68, p. 428.

³ See statement of the Board of Finance issued Aug. 4, 1876, quoted in the *Financial Chronicle* for Aug. 19, 1876.

charge which these bonds threw upon her, she adopted the policy which has been noted in connection with the bank bonds, and allowed the interest to accumulate.

Another class of bonds must also be noticed before we turn to the repudiation acts of this State. It embraces bonds issued for the construction of levees. They amounted in principal to nearly \$2,000,000 all told, and were authorized at about the same time as the railroad bonds. The interest on these was also allowed to accumulate, owing to the inability of the State to pay it.

This heavy indebtedness, together with delinquency in the payment of interest, had a most depressing influence on every branch of business in the State, and was a serious drawback to her prosperity. All patriotic citizens naturally desired a settlement, but how to accomplish this was a problem not easily solved. The State was obliged to borrow money from year to year to meet current expenses. Nearly all the taxes were paid in State scrip, and this could not be used for the payment of debts. It was urged by the best informed people of the State that it was useless to attempt a compromise of the State's indebtedness before the scrip had been redeemed and destroyed, for then only could the treasury be supplied with funds for the payment of interest.

The legislature of 1874-'75 was the first one to enter vigorously and in earnest upon the work of

extricating the State from her financial difficulties. It passed an act¹ on Dec. 23, 1875, authorizing an issue of bonds to the amount of \$2,500,000 for the purpose of redeeming the floating indebtedness. In order to secure the purchasers of these bonds, the State mortgaged all her unsold public lands, and provided that the interest should be paid out of the first moneys coming into the treasury. This legislature further provided by act² for the appointment of a Board of Finance for the purpose of consulting bondholders and deciding upon a plan for the settling of the just debt of the State. The following legislature, on Nov. 16, 1875, passed an act³ authorizing this Board to borrow money to pay the expenses of the State government, and to pledge bonds of the State as security. Under authority of these acts the Board proceeded to retire the State scrip, holding that this must be the first step towards the settlement of the finances.

At this time an annual tax of three mills was being collected for general purposes, another of three mills to pay interest on the debt, and another of two mills for school purposes. The total assessed valuation of the taxable property of the State being only about \$80,000,000, this rate did not produce revenue enough either to pay interest on the debt contracted since 1874, or to meet the current expenses of the State. The latter amounted

¹ Acts of Arkansas for 1874-75, p. 72.

² *Ibid.*

³ *Ibid.*, 1875, p. 14.

to about \$300,000 annually, and the former to \$248,000.¹ The Board, therefore, made temporary loans — hypothecating bonds as security — to meet these expenses, and retired the scrip paid in for taxes. In a statement² bearing date Aug. 4, 1876, the Board showed that at the rate the scrip was then coming in, it would require two and perhaps three years to retire it, and they expressed the opinion that no plan for the settlement of the debt could be devised — with any assurance that it could be carried into execution — until this had been accomplished. They therefore advised that the interest on the debt contracted previous to 1874 be allowed to accumulate until such time as the income of the State should furnish a clear surplus which could be used as a basis for calculation of her ability to pay interest.

Before this time arrived, however, the debt question was settled in a manner different, perhaps, from that which the Board of Finance had contemplated. As early as 1872 charges of illegality had been made against the levee and railroad aid bonds, and long before that time a certain number of the bonds originally issued in aid of banks, known as the Holford bonds, had been tainted with the suspicion of illegality and fraud in their issue. May 3, 1877, a case was brought

¹ \$188,000 on the funding bonds authorized by the act of Dec. 23, 1874, and \$60,000 on the ten-year bonds known as the war bonds.

² See *Financial Chronicle* for Aug. 19, 1876.

before the Circuit Court at Little Rock which turned upon the validity of the railroad aid bonds, and the decision of the court was that these bonds were unconstitutional and consequently null and void. An appeal was made to the Supreme Court, which, in June of the same year, confirmed the decision of the lower court.¹ The levee bonds issued in 1869 and 1870 met the same fate in the following year.

The basis of the decision in the case of the railroad aid bonds was the fact that the election for the purpose of taking the sense of the people on the question of lending the credit of the State, as provided in the act authorizing the bonds, was held before the act went into force, and was, in consequence, a nullity. The bonds, therefore, issued under authority of the act were unconstitutional, since their issue had not received the "consent of the people expressed at the ballot box," as required by Section 6 of Article X. of the constitution.

The basis of the decision in reference to the levee bonds was also a mere technicality. The State constitution² provided that every act creating a liability or making an appropriation should be passed by a majority of two-thirds of both houses of the legislature, and that the vote thereon should be taken by yeas and nays and entered

¹ See 31 Arkansas, 701.

² Art. v. Sections 12 and 27.

upon the journal. It was shown that in the cases of the acts authorizing these bonds this last formality had not been complied with, and the courts deemed this sufficient to establish their unconstitutionality and consequent invalidity.¹

The so-called "Holford bonds," attempts to repudiate which had been made at various times and were now repeated, have a history extending back to Sept. 7, 1840. On that date bonds to the amount of \$500,000 were pledged by the Real Estate Bank to the New York Trust and Banking Company as security for a loan. The State expected to receive thereon \$250,000, but it actually received only \$121,336.39.² These same bonds were subsequently transferred by this Trust Company to one Holford in payment of a debt of \$300,000. It was claimed that the law authorizing the issue of these bonds had been violated by the sale of the bonds below par, and, moreover, it was urged that fraud had attended every step of their history. These matters were considered, however, previous to the passage of the funding act of 1869, with the result that these bonds were included in its provisions and were subsequently funded. This, however, did not prevent resolutions³ being passed by both houses of the legisla-

¹ See *Financial Chronicle* for July 6, 1878; also *Tenth Census*, vol. vii. p. 603.

² See *Tenth Census*, vol. vii. p. 603.

³ See *Acts of Arkansas* for 1879, pp. 10 and 48.

ture in February, 1879, favoring their repudiation.

In September, 1880, a constitutional amendment¹ was submitted to the people which repudiated the above three classes of bonds, but it failed to secure a majority of all the votes cast at the election, and so did not become a part of the public law. The amendment really concerned only the Holford bonds, for the question of the validity of the levee and railroad aid bonds had been settled by the decisions of the courts of which mention has been made. The adverse vote on the amendment really meant that the people were not yet willing to repudiate the Holford bonds. Four years more of agitation were needed to change their views. A second amendment,² declaring that the General Assembly should have no power to levy a tax or to make an appropriation to pay interest or principal of the bonds or the claims upon which they were based, known as the Holford bonds, railroad aid bonds, and levee bonds, was submitted to them Sept. 1, 1884, and adopted by a fair majority.

The total amount of indebtedness of which the State was finally relieved by this amendment, including the accrued interest, was between twelve and thirteen millions of dollars. The remaining debt of the State was estimated by Governor Barry

¹ See *Acts of Arkansas* for 1879, p. 149.

² For the amendment, see *Ibid.*, 1883, p. 346.

V.

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NESOTA, AND MICHIGAN.

State. The penalty fixed for the non-payment of the interest or the sinking fund was sequestration through the appointment of a receiver by the Governor. By subsequent acts¹ the amount to be set apart as a sinking fund was raised to two, and afterwards to four per cent of the total amount lent; and the penalty was changed so that the State had a right to sell the roads in case they defaulted in the payment of interest or sinking fund. The act also contained the following clause:—

“ SECTION 12.—Be it enacted that the State of Tennessee expressly reserves the right to enact by the legislature thereof hereafter all such laws as may be deemed necessary to protect the interests of the State, and to secure the State against loss in consequence of the issuance of bonds under the provisions of this act; but in such manner as not to impair the vested rights of the stockholders of the companies.”

Under authority of these acts, State bonds to the amount of \$27,678,000² were lent to railroad companies, some being issued before the war and others in the years immediately succeeding it.

Besides this contingent indebtedness there was, before the war, a State debt proper, a portion of which had been created between 1833 and 1838

¹ See an act passed Feb. 21, 1856.—Acts of Tennessee for 1855-56, p. 444; also an act passed Nov. 23, 1865.—Acts of Tennessee for 1865-66, p. 11.

² Financial Chronicle for Oct. 1, 1870.

for the Union Bank and the Bank of Tennessee, between 1848 and 1860 for the building of the Capitol, and in 1856 for the Agricultural Bureau and the purchase of the Hermitage.¹ The total indebtedness of the State in 1861 was about \$21,000,000 in round numbers.

During the next decade this debt was at least doubled, owing chiefly to two causes; viz., the issuance of several millions more of bonds to railroads, and the accumulations of interest. At least one-half of the total \$27,000,000 of bonds in aid of railroads was issued after the war, and comparatively little interest had been paid when the funding act of 1873 was passed. For this latter fact the civil war was chiefly but not wholly responsible. During the years of its continuance, of course, neither the roads nor the State could meet their obligations, and at its close conditions were unfavorable to the State. The Bank of Tennessee had succumbed during the period, and its notes, which were receivable for taxes, seriously crippled the treasury. The taxation system of the State, moreover, was very defective. The rate, twenty cents per hundred dollars, was much too low for a State so heavily burdened with debts. The assessments in the different counties were very unequal. The penalties for non-payment of taxes were very inadequate, and the collectors in many instances were irresponsible men who de-

¹ The old home of President Jackson.

frauded the State out of large amounts. The delinquent tax list at the end of the fiscal year, ending Sept. 30, 1871, footed up \$1,283,115.¹

The State had expected that the greater part of the annual interest charge would be paid by the various railroad companies to which she had lent bonds, and upon the property of which she held first mortgage liens. But some of these companies had never paid a cent of interest,² and others had defaulted for large amounts. The State was responsible for the whole sum, since the bonds were her own and bore no mark of the railroad companies who enjoyed their use. In 1865 she provided by law³ for the funding of the interest which had accumulated up to that time, and in 1868 she repeated the same act⁴ for the interest then overdue. Up to this time she had not seen fit to make use of her legal rights to indemnification from the defaulting roads. The interests of the companies, which had scarcely had a chance to recover from the disasters of the war period, and the hope that they would soon be able to meet their obligations, deterred her from taking this course, as well as the impression that there was a better way to meet the difficulty. Under authority of the clause of the act of 1852, which gave the State the right to make any laws necessary for the protection of her

¹ Financial Chronicle for March 18, 1871.

² *Ibid.*, Oct. 1, 1870.

³ Acts of Tennessee for 1865-66, p. 10.

⁴ *Ibid.*, Extra Session, 1868, p. 15.

own interests, provided she did not interfere with the vested rights of stockholders, the legislatures of 1869 and 1870 passed four acts, designed to extricate her from financial difficulties.

The first one, passed Feb. 25, 1869,¹ provided that railroads indebted to the State might pay off their obligations in State bonds; and, in order that they might procure the funds needed for this purpose, they were authorized to issue bonds of their own in amounts and in denominations equal to the State bonds paid into the treasury. The State, on her part, agreed to transfer her first mortgage lien to holders of these railroad bonds. On Jan. 20, 1870, an amendment² to this act was passed, which permitted the railroad companies to fix the rate of interest on their bonds, and which extended their rights so as to permit them to pay in any bonds of the State.

The two other acts of 1870 provided for the sale of delinquent roads. One passed July 1, authorized the appointment of a railroad commission,³ and prescribed as its duty the sale of the State's interest in railroads to whose companies the bonds of the State had been lent by the act of Dec. 7, 1867, and former acts, and whose companies had failed, or should fail for two consecutive years, to pay the interest that had accrued or should

¹ Acts of Tennessee for 1868-69, p. 50.

² *Ibid.*, 1869-70, p. 61.

³ See Thompson & Steger, *Statutes of Tennessee*, 1871, Sec. 1127 b.

accrue upon the bonds lent them. The other act¹ was passed Dec. 22, and was occasioned by an unsuccessful attempt of the commissioners to sell certain of the roads which had been advertised. It was discovered that in case of the sale of the roads, a number of legal technicalities could be raised which would throw uncertainty upon the title which the commissioners could convey, and consequently buyers held aloof. The commissioners, therefore, recommended that bills against the delinquent roads be filed in the Chancery Court at Nashville, and that all controversies and legal questions be settled by that court. The bill in question embodied these recommendations of the commissioners.

These acts afforded the State much relief. The solvent railroad companies were glad to exchange their own bonds for those of the State, which could be purchased at sixty-five cents on the dollar, or less. The commissioners vigorously executed the acts of July 1 and Dec. 22, 1870, and from time to time sold roads that had defaulted at prices which, at any rate, partially indemnified the State. By these means the debt was diminished each year. From \$43,052,625.25 in 1870, it diminished to \$38,539,802.25 in 1871; to \$33,190,802.37 in 1872; to \$30,632,200.76 in 1873; and to \$27,920,386.45 in 1874.² These reductions, however, did not enable

¹ Acts of Tennessee for 1870-71, p. 25.

² These figures were taken from the *Financial Chronicle* for May 10, 1874.

the State to meet her financial obligations. When the legislature met in 1873, a large amount of overdue and unpaid interest coupons had accumulated, and some of the bonds had fallen due. To cover this deficit the old expedient of a funding act¹ was resorted to. It was passed March 15, 1873, and provided that all past due coupons and bonds might be funded into new bonds bearing interest at six per cent, redeemable after July 1, 1884, and due and payable July 1, 1914. It also provided that coupons falling due on and before Jan. 1, 1874, should be funded at once, and that bonds falling due after that date might also be funded if the legislature should so direct. Coupons on the new bonds were to be payable on January and July of each year, beginning July, 1874.

This act and the successful funding operations which followed it temporarily revived the spirits of the State officers, and seem to have aroused the hope that the State might not again fall into arrears. The Governor assured the bondholders of his belief in the ability of the State to meet all her obligations; and as early as February, 1874, four months before the first coupons of the new issue fell due, the comptroller announced that coupons would be paid at the treasury with rebate of interest, stating as the reason for this procedure that there was a considerable sum of money in the

¹ *Acts of Tennessee for 1873*, p. 34.

treasury upon which the State was receiving no interest, and which might as well be used for this purpose. These hopes, however, if entertained, were groundless. The funding act had increased rather than diminished the annual interest charge by funding the past due interest, and the legislature failed adequately to provide for that increase of income without which the State was as bad or worse off than she had been before. The only measure looking to this end was an act¹ providing for a more equitable assessment of property throughout the State. It was hoped that this would increase the revenue to some extent; but a very slight calculation would have shown that without increasing the tax rate or the basis of taxation, the increase could not be sufficient to cover the old deficiency and the new increase of interest. That the true situation was well understood on Wall Street is evinced by the fact that when the legislature adjourned without providing for an increase in the revenues, State bonds of Tennessee at once fell several points.²

The financial record of the State for the next four years justified the gloomiest apprehensions which could have been felt in 1873 and 1874. The coupons which fell due in July of the latter year were nearly but not quite all paid. Those which fell due in January, 1875, could be paid

¹ Acts of Tennessee for 1873, p. 168.

² See *Financial Chronicle* for April 5, 1873.

only by the aid of a temporary loan of \$300,000. When the next instalment became due, July 1, 1875, the treasury was nearly empty. Besides \$255,000 of the temporary loan made for the payment of the January coupons of 1875, there were outstanding \$425,000 in warrants. The Governor and Comptroller attempted to make a temporary loan to meet these obligations, but failed. Bankers offered the money at seven and one-fourth per cent interest, on condition that the State deposit as collateral security for \$600,000, State bonds to the amount of \$850,000; but since this latter requirement could not be met, the Governor was obliged to announce that the July coupons could not be paid.

At the opening of the legislative session in December, 1875, the Governor delivered a very doleful message. He stated that the assessment returns for 1874 as compared with those for 1873 exhibited a decrease of \$18,556,173, and predicted that the revenue for the coming year, even estimated on the basis of the valuation of 1873 and at the rate of four mills on the dollar, would not suffice, unaided by arrearages, to meet the demands upon the treasury. The State Treasurer in his report predicted a deficit for the ensuing year of more than \$230,000. The Governor recommended a sharp reduction of the current expenses of the government and improvements in the laws taxing corporations, and the Treasurer

recommended an increase of the tax rate to sixty cents per one hundred dollars, and stated it to be his belief that the difficulty of collecting taxes during the year would be very great.

Though evincing a desire to meet the difficulty and to pay off the debt, the legislature did not deem it advisable to adopt the recommendation of the Treasurer. The crops had been a failure in the preceding year, and the clamors of the people had induced the preceding legislature to extend by several months the time for paying taxes. This legislature shrank from the responsibility of increasing the tax rate under such circumstances, and were only able to offer as a remedy for the State's financial disease a tax upon railroads. A law¹ was passed which gave these corporations the option of submitting to a tax of one and one-half per cent on their gross earnings, or of forty cents per one hundred dollars of their property lying in the State. The courts decided a little later that a tax on gross earnings was unconstitutional, so the latter alternative alone could be accepted.

The year 1876 did not bring any improvement to the finances of the State. Conditions, on the contrary, grew worse. The assessment returns showed a reduction in the value of the property of the State of over ten million dollars. In September the coupons due on and before July, 1875,

¹ *Acts of Tennessee for 1875*, p. 100.

were paid, but on those falling due subsequent to this date the State was obliged to default.

By this time the State's failure to pay her debts had seriously affected the credit, not only of herself, but of corporations and individuals within her borders. Every branch of business was depressed, and discouragement and dissatisfaction were everywhere observable. The collection of taxes was a work of extreme difficulty, and, under the tax laws of the State, was very imperfectly accomplished. The arrearages on Jan. 1, 1877, amounted to \$1,570,659.¹ Under these circumstances the necessity for compromise with the holders of bonds became apparent to all who gave the matter any attention. The conviction that an increase in the burdens of taxation was impracticable and impossible was widespread and ineradicable. Threats of repudiation were not wanting among the unscrupulous. Among the wise and thoughtful the plan most in favor was the scaling of the debt twenty-five, forty, or fifty per cent with the consent of the bondholders, accompanied by a guaranty that the interest would be punctually paid on the remainder.

Many of the bondholders showed their appreciation of the efforts that had been made by the State to meet her obligations, and their sympathy for her in her financial distress, by personally communicating to the Governor their willingness to

¹ *Financial Chronicle* for Jan. 13, 1877.

compromise. These communications were given to the legislature in the Governor's message, and thereupon, Jan. 26, 1877, that body adopted the following resolution:¹—

Whereas, The General Assembly has with pleasure received, through the message of his Excellency the Governor, the communication of certain gentlemen, holders of the bonds of the State and representatives of holders of bonds, asking a conference looking to a permanent and equitable adjustment and compromise of the claims held by them against the State; therefore be it

Resolved, By the General Assembly that the Governor be requested to communicate by telegrams or by letters with the gentlemen holding securities of the State mentioned in his message, and request them to submit at the earliest day possible, through him, to the General Assembly any proposition or propositions of adjustment and compromise which they may desire.

In response to this resolution a committee of the bondholders met a committee of the legislature, and, after consultation, made in July the following proposition: that all arrearages of interest to July 1, 1877, be added to the bonds, and that new ones for sixty per cent of the total amount be issued, made to bear interest at six per cent, and to fall due in thirty years. The legislature met this proposition in a spirit directly contrary to that

¹ See *Acts of Tennessee for 1877*, p. 239.

evinced in the resolution. They not only rejected the proposition, but the payment of interest on the debt was made absolutely impossible by reducing the tax rate from forty to ten cents per one hundred dollars.¹ The Governor was very much chagrined at this result of his negotiations, and called a special session of the legislature to consider the bondholders' proposition, and to take whatever measures seemed necessary for the settlement of the debt question. A proposition of the bondholders, modified so as to permit a scaling of the debt to fifty per cent of the amount of the original bonds with the interest added, was presented to the General Assembly in December, 1877, only to be rejected like its predecessor.

In the interval between this and the regular session of 1879 the debt question was much discussed, and a sentiment in favor of at least partial repudiation grew apace. Political demagogues aroused suspicion concerning the legality of some of the bonds, and the poverty of the State was much exaggerated. The legislature of 1879 consisted of a body of men who had the conviction that a tax of thirty cents per one hundred dollars was the highest which the people would or could endure, and that an investigation into the legality of the bonds should precede any compromise with the bondholders. It met in December, 1878, and appointed a committee of

¹ *Acts of Tennessee for 1877*, p. 105.

investigation, which reported a little later that in the case of the issue of nearly \$11,221,000 of bonds, the conditions of the laws authorizing them had not been complied with; also that the greater part of the debt was the result of corrupt legislation, superinduced by corporate bodies seeking State aid.¹ This report doubtless fostered the sentiment of repudiation already rife in the State, and strengthened the determination of the legislature to force a compromise at a very low rate.

In the early part of the session the bondholders renewed their previous proposition, and offered also an alternative proposition in which they agreed to accept new bonds at par with accrued interest, the same to bear four per cent interest, and the coupons to be receivable for taxes. A bill was rejected by the House which proposed to scale the debt fifty per cent and to make the new bonds bear four per cent interest. The Senate Committee on Finance recommended the funding, with accrued interest, of the Capitol, Hermitage, and Agricultural bonds held by Mrs. President James K. Polk, and the bonds of the State educational institutions, at sixty cents on the dollar and four per cent interest; the funding of the Union Bank, Bank of Tennessee, the Tennessee, Virginia, and Georgia, and the La Grange and Memphis railroad bonds at fifty cents on the dollar and four per cent interest; and

¹ The report of this committee may be found in the Appendix to the Senate Journal of Tennessee for 1879.

the bonds funded under the acts of 1868 and 1873 at thirty-three cents on the dollar and four per cent interest. It also recommended the repudiation entire of the Mineral Home Railroad and some other bonds, and the payment of the railroad bonds issued since the war in non-interest-bearing warrants at thirty-three cents on the dollar, the same to be receivable for taxes and other dues to the State.¹ This report was rejected, after discussion, and a new bill was sketched by a joint committee of both houses and the bondholders. This was approved on March 31.² It was to become a law when approved by the people. The funding act of 1873 had been repealed by act³ of March 22, 1879, and the present act provided for the settlement of the debt question by the issue of bonds bearing interest at four per cent to be exchanged for outstanding bonds, with the interest accrued thereon, at the rate of fifty cents on the dollar. A committee was appointed by the Governor to secure the consent of at least two-thirds of the bondholders, and, after a visit to New York, they reported their mission accomplished. Aug. 7, 1879, the act was presented to the people for their confirmation; but, much to the regret and disgust of those who had hoped that the matter was at last settled, they rejected it. Another expensive legis-

¹ See *Financial Chronicle* for March 15, 1879.

² *Acts of Tennessee* for 1879, p. 247.

³ *Ibid.*, p. 189.

lature had thrown away its labors. The same old problem confronted its successor.

The failure of these repeated attempts at compromise, especially the last one, in which the creditors of the State had agreed to scale their claims one-half, and accept on the remainder a rate of interest much lower than that borne by the old bonds, justified the suspicion of the bondholders that the State would eventually repudiate her debts *in toto*. They thus felt themselves driven to a last resort in the defence of their rights. They now claimed that their bonds constituted a lien upon the property of the railroads in whose aid they were issued, and that the State legislature had transcended its authority in dismissing these liens. Of course the railroads denied the obligation to pay these bonds, and the matter was brought before the United States Circuit Court of Tennessee for adjudication. The court decided against the bondholders, and the latter appealed to the Supreme Court of the United States. The decision of this court was rendered in 1883, and confirmed that of the lower court, thus destroying the hope of the bondholders.¹

In the State political campaign of 1880 the debt question was the chief issue. The Democratic party split into two factions, but the sentiment in favor of the bondholders prevailed, and the General Assembly of 1881 legislated entirely in

¹ See 114 U. S., 665.

their interest. An act¹ was passed much more favorable to them than any of the compromise bills which had failed. It provided for the funding of outstanding bonds and overdue coupons at par; the new bonds to bear three per cent interest, and the coupons to be receivable for taxes. The passage of this act was the cause of general rejoicing, not only among the bondholders but among the people of the country who were interested in what they called an honest settlement of the debts of the Southern States. Congratulatory letters were written from various quarters, and the financial journals wrote congratulatory editorials. That faction in the State, however, which now became known as the repudiation party, was not in a mood to receive congratulations. Several members of it at once sought ways and means of preventing funding operations under the act, and found them. The act became a law in April; and on May 24 a bill was served on the Comptroller at Nashville, by the sheriff of Davidson County, enjoining the funding board from carrying out the provisions of the act.

The charges made in this bill are thus stated in the *Financial Chronicle* for May 28, 1881: "The bill alleges that the Mineral Home railroad bonds, and the bonds issued for the war interest and war purposes were illegally issued; that the funding act was procured by bribery; that members of the

¹ *Acts of Tennessee for 1881*, p. 279.

legislature were speculating in Tennessee bonds when the act was passed; and that one member received \$10,000 and another \$15,000 for voting for the act. The bill further charges that the act is unconstitutional because it appropriates revenue for ninety-nine years, while the constitution prohibits appropriations for longer than two years; also because it confers judicial powers on the executive officers to pass upon the legality of bonds; that by the coupon feature the school fund is diverted from its legitimate purpose; that it provides for funding bonds held by certain bondholders, but excepts bonds held by charitable and educational institutions; that the act fails to recite in its caption or otherwise the title or substance of the law repealed, revived, or amended; that it repeals the section of the act of March, 1873, prohibiting the reception of anything but treasury warrants, gold, and silver, United States banknotes, and the old issue of the Bank of Tennessee for taxes, by making the coupons receivable for taxes. The bill further alleges that the act is ambiguous, and asks for a construction of the act by the court."

A test case was brought before the Circuit Court, and the charge of unconstitutionality made in the bill asking for an injunction was sustained. The legislature, it was held, could not, according to the constitution, make a valid contract in which the coupons should be receivable for taxes for

ninety-nine years. Thus was the rejoicing of the bondholders again turned into mourning, and the debt question once more relegated to the people for settlement.

The legislature of 1882 was more successful, but it did not have the honor of bringing the controversy to a close. In April a meeting of the bondholders was held, and a proposition submitted to the legislature to fund the debt, and accrued interest in bonds bearing interest at four per cent for three years, five per cent for five years, and six per cent thereafter until maturity, the face value of the bonds to equal sixty per cent of the total debt. This proposition was incorporated in a bill which became a law on May 20.¹ The bonds were to fall due in 1912, and to be redeemable after Jan. 1, 1887. Under this act funding operations were actually commenced,² but they had not proceeded far before the treasurer announced that he would not pay the coupons on the new bonds which would fall due in January, 1883; and when the legislature met in December, 1882, a joint resolution was passed forbidding the payment of any interest except on the bonds held by charitable institutions, Mrs. Polk, and the United States government. In his message to the legislature

¹ See Acts of Tennessee passed by the Third Extraordinary Session of the Forty-Second General Assembly, 1882, p. 6.

² The Financial Chronicle for Oct. 21, 1882, reported that \$12,000,000 of bonds had been funded under the new act.

Governor Bate said that, owing to a late defalcation, the treasury was quite empty, and maintained that the people in the last election had expressed themselves as opposed to the late funding act, and in favor of a settlement on quite a different basis. He then outlined a plan of settlement which he thought would be just to the bondholders and satisfactory to the people. His recommendations were incorporated in a bill, and enacted into a law on March 20, 1883.¹ The statement of the Governor proved to be true, and this law settled the controversy. Its chief provisions are as follows:—

It divides the debt into two parts. The first part, called the State debt proper, is made to consist of the following bonds: The Capitol bonds, \$493,000; the Hermitage bonds, \$35,000; the Agricultural bonds, \$18,000; the Union Bank bonds, \$125,000; Bank of Tennessee bonds, \$214,000; bonds issued to turnpike companies, \$741,000; Hiawssee Railroad bonds, \$280,000; East Tennessee and Georgia Railroad bonds, \$144,000; Memphis and La Grange Railroad bonds, \$68,000. After adding to the face value of these bonds the interest accruing up to July, 1883, they are put into three classes according as they bear interest at six, five and one-fourth, or five per cent; and it is provided that the first class shall be scaled twenty-four per cent, the second class twenty-one

¹ *Acts of Tennessee for 1883*, p. 76; also Appendix V.

per cent, and the third class twenty per cent. The new bonds of each class are made to bear interest at the same rate as the old ones.

The act provides that bonds which represent funded interest shall be scaled fifty per cent, and that the bonds for which they are exchanged shall bear interest at three per cent.

The second part comprises ante-war railroad bonds amounting to \$8,583,000; post-war railroad bonds amounting to \$2,638,000; bonds funded under the act of 1866 amounting to \$2,246,000; bonds funded under the act of 1868 amounting to \$596,000; and bonds funded under the act of 1873 amounting to \$4,867,000. The act provides that these bonds shall be scaled fifty per cent, and that the new issue shall bear interest at three per cent. The bill further provides for the refunding of the bonds funded under the act of 1882 in such a manner as to conform to the above conditions.

Section 5 of the act excepts from its provisions all existing bonds held by educational, literary, and charitable institutions of the State on Jan. 1, 1882, and the twenty-nine bonds held by the widow of James K. Polk.

All the bonds authorized by the act were to be payable in thirty years, and redeemable at the pleasure of the State after five years.

Minnesota.

By an act of Congress passed March 3, 1857, a grant of land was made to the Territory of Minnesota to aid in the construction of the Minnesota and Pacific, the Minneapolis and Cedar Valley, the Transit, and the Southern Minnesota railroads. "Every alternate section of land designated by odd numbers, for six sections in width, on each side of each of said roads and branches" was granted. May 22, 1857, the legislature of the territory accepted the grant, and provided for the execution of the trust.¹

The railroad companies thus assisted had neither the money nor the credit which was needed for the prosecution of their enterprises, and on this account applied to the State for more aid. In order to grant this, an amendment to the constitution was necessary, for Section 5, Article 9, limited the amount of the State debt to \$250,000, and Section 10 prohibited the State from loaning her credit to any individual, association, or corporation. On April 15, 1858, the following amendment suitable for the purpose was submitted to the people, and carried by a large majority: "The credit of the State shall never be given or loaned in aid of any individual, association, or corporation; except that for the purpose of expediting the construction of the lines of railroads in aid of which the Congress

¹ See Laws of Minnesota for 1857, p. 3.

of the United States has granted lands to the Territory of Minnesota, the Governor shall cause to be issued and delivered to each of the companies in which said grants are vested by the legislative assembly of Minnesota, the special bonds of the State, bearing an interest of seven per cent per annum, payable semi-annually in the City of New York, as a loan of public credit, to an amount not exceeding \$1,250,000, or an aggregate amount to all of said companies not exceeding \$5,000,000."¹

Upon the application of the companies for the issue of these bonds, Governor Sibley made public what he deemed to be the correct construction of the act in the form of a number of conditions upon which the State bonds would be delivered. The prime condition was that in return for the bonds the State must receive first mortgage bonds of these companies in amount equal to the State bonds received by them, giving the State priority of lien upon their entire lands, roads, and franchises.

The companies denied that the Governor had construed the act properly, and one of them (the Minnesota and Pacific Railroad Company) appealed to the State Supreme Court for a writ of *mandamus* to compel the Governor to issue the bonds. The court decided that the Governor's ruling was erroneous, and that the State by her own act had placed herself upon a like footing with other holders of the first mortgage bonds of the companies under their

¹ *Laws of Minnesota for 1858*, p. 9.

deeds of trust.¹ After this Governor Sibley directed the issue of the bonds, but the railroads, even with his active assistance, could negotiate them only with great difficulty. The bond-buying public had been frightened by the previous disagreement and refused to purchase.

The railroad companies could not negotiate their own bonds except at ruinous rates, and they were compelled to stop work on the roads and to default in the payment of their obligations. With ruin staring them in the face, they proceeded to make terms more favorable to the State. The Minneapolis and Cedar Valley Company filed in the executive office a full waiver of all its rights under the decision of the Supreme Court, and accepted the original terms prescribed by the Governor. The Southern Minnesota Company agreed that only \$2,000,000 of first mortgage bonds should be issued on its entire road, including \$1,250,000 to the State. The Transit Company and the Minnesota and Pacific Company made similar concessions in favor of the State.

All this repentance, however, came too late. The work did not go on. The companies defaulted in the interest on the \$2,275,000 of bonds which the State held, and the State was obliged to foreclose her mortgages. She thus acquired about two hundred and fifty miles of graded road, the franchises of the companies, and lands amounting to about

¹ Minnesota Reports, vol. ii. p. 13.

endment to the constitution already noticed, and to be approved by the people before it forced. It was therefore submitted to the general election, but was defeated by a majority. It was in no sense a vote of the rejection of the act was a feeling that the State was not bound to this debt.

"Delano Bill" was passed which in substance gave one interest on the bonds to buy up the bonds of the people. Re subsequent legislatures understanding that thousand acres bed, and franchises which the bill was by the foreclosure of her mortgages, thus the companies free and clear.³

The bondholders,⁴ however, were not disposed to submit to this settlement without a struggle. One of the contractors, who had received payment in bonds, submitted his claims to the United States Court of the State for adjudication. He pleaded that the property of the roads of which the State had taken possession constituted a security for the

¹ Only this amount of bonds had been issued by the State before the failure of the railroads.

² Laws of Minnesota for 1860, p. 297.

³ See acts of March 10, 1862.—Laws of Minnesota for 1862, pp. 226 and 247.

⁴ The State bonds which could not be sold upon the market had been used by the company to pay contractors and others to whom they were indebted, and had thus come into the hands of innocent holders.

bondholders, but the decision of the court blasted his hopes and those of others under conditions similar to his. It held "that where land is conveyed to the State by a corporation as indemnity against losses on State bonds loaned to it, the bondholders have no equity for the application of the land to the payment of the bonds which can be enforced against the State."

Thus the matter rested until Feb. 28, 1866, when an act¹ was passed authorizing the appointment of commissioners to receive propositions from the holders of railroad bonds, and to inquire into and examine all claims arising under the amendment to Section 10, Article 9 of the constitution, adopted April 15, 1858. The act further declared *forever barred* all claims which should not be presented to these commissioners prior to Jan. 1, 1867. The outcome of the proceedings which followed this enactment was the law of March 5, 1867,² which authorized the establishment of a sinking fund for the redemption of these bonds. To this purpose was to be devoted, according to the enactment, the proceeds from the lands granted the State by the act of Congress of Sept. 4, 1841,³ and all moneys paid into the treasury by the several railroads as or in lieu of taxes. According to

¹ Laws of Minnesota for 1866, p. 9.

² *Ibid.*, 1867, p. 93.

³ This act was entitled "An act to appropriate the proceeds of sales of public lands and to grant pre-emption rights." Under it Minnesota acquired about five hundred thousand acres of land.

the amendment to the constitution already noticed, the act had to be approved by the people before it could be enforced. It was therefore submitted to vote at the next general election, but was defeated by a considerable majority. It was in no sense a political measure, and the rejection of the act was due to the popular feeling that the State was not in justice bound to pay this debt.

In 1869 the so-called "Delano Bill" was passed by the legislature, "which in substance gave one man thirteen years in which to buy up the bonds at his own price," with the understanding that he was to receive the five hundred thousand acres of land acquired by the act of Congress of Sept. 4, 1841, in exchange therefor. This bill was vetoed by the Governor, however, and thus the whole matter was again relegated to the legislature and people for settlement. The next State legislature took up the case and passed the so-called "Land Bond Bill,"¹ which received the signature of the Governor and the sanction of the people, but unfortunately not the approval of the bond-holders. It provided for the exchange of the State railroad bonds with unpaid coupons attached, for portions of the five hundred thousand acres of land above mentioned, the land to be rated at not less than \$8.70 per acre. It further provided that the act should not go into force until at least two thousand of the State railroad bonds had been

¹ Laws of Minnesota for 1870, p. 19.

deposited with a commissioner appointed for the purpose. Inasmuch as the minimum price for which the land was to be exchanged was about four times its market value at the time, the bond-holders were not attracted by the offer, and the requisite two thousand bonds were never deposited.

Further attempts to use these lands for the payment of the bonds were delayed by a constitutional amendment adopted in November, 1873, which forbade any moneys derived from the sale of these lands being appropriated "for any purpose whatever until the enactment for that purpose shall have been approved by a majority of the electors of the State, voting at the annual general election following the passage of the act."¹

At the opening of the legislative session of 1876, both the retiring Governor, C. K. Davis, and the incoming Governor, J. S. Pillsbury, urged the legislature to give careful attention to the State railroad bonds. They reviewed the previous legislation upon the subject, insisted upon the obligation of the State, and dwelt upon the disgrace, injustice, and bad policy of repudiation. In his message to the next legislature Governor Pillsbury again referred to the matter in vigorous terms, and this time with success. An act² was passed March 1 providing for the funding of the "Minnesota State Railroad Bonds" into new six

¹ Laws of Minnesota for 1872, p. 63.

² *Ibid.*, 1877, p. 183.

per cent bonds, the rate of exchange being sixteen hundred dollars in new bonds for each one thousand dollar old bond, the additional six hundred dollars being indemnification for unpaid interest. To the surprise and mortification of those who were eager to see the honor of the State vindicated, the people rejected this act by a very large vote.

It now became evident that the people were determined to repudiate these bonds, and that, if the State were ever to be cleared of the disgrace of such an act, some means must be devised by which the settlement of the matter could be left to the legislature. The constitutionality of the amendment of 1860 having been questioned very often,¹ the legislature of 1881 determined to force a decision concerning its validity from the Supreme Court of the State. Accordingly on March 2 it passed an act² which constituted the judges of the Supreme Court a tribunal to decide whether the legislature had the right to provide for the payment of the bonds without submitting the matter to a vote of the people, and also to decide all cases that might arise in the settlement of the State railroad bonds. It further provided for the issue of new bonds in exchange for the old ones with accrued interest at the rate of fifty cents on the

¹ The Supreme Court of the United States had incidentally declared that it violated the obligation of the contract between the State and the bondholders.—See *Farnsworth v. Minnesota and Pacific Railroad Company*, 92 U. S., 49.

² *Laws of Minnesota for 1881*, p. 117.

dollar. The Supreme Court judges refused to serve on this tribunal, and five district judges were appointed in their places. Before they were able to proceed with the business in hand, however, a writ of prohibition was served upon them by a resident taxpayer (D. A. Secombe, Esq.), and the matter was thus brought before the Supreme Court. As had been hoped, it decided that the amendment of 1860 was unconstitutional, and that the legislature had a right to settle the question of the railroad bonds without submitting their acts to a vote of the people.¹

This decision cleared the road for the final settlement. The whole matter was once more relegated to the legislature for treatment. Governor Pillsbury called a special session of that body in September, 1881, and it passed an act² which brought the controversy to a close. This act provided for the issue of bonds to be known as "Minnesota State Railroad Adjustment Bonds," which were to be exchanged for the outstanding bonds which had been issued to railroads, and the interest accrued thereon, at the rate of fifty dollars of the former for one hundred dollars of the latter. These new bonds were to be dated July 1, 1881, and were to bear interest at five per cent. They were to be payable at the option of the State after ten years, and were to fall due in thirty years,

¹ See *State v. Young*, Minnesota Reports, vol. xxix. p. 474.

² See Laws of Minnesota, Extra Session, 1881, p. 13.

provided the State could not negotiate her bonds at a lower rate of interest than five per cent. In case her credit improved to such an extent that her bonds could be negotiated at a lower rate of interest than five per cent, the State reserved the right to pay the bonds in cash.

The settlement of this vexed question on this comparatively honorable basis had the anticipated effect upon the State's credit. In less than a year after the passage of the act of settlement Minnesota bonds bearing four and a half per cent interest were sold in quantities sufficient to permit the retirement of the railroad adjustment bonds.¹

Michigan.

March 21, 1837, the first State legislature of Michigan authorized her Governor to negotiate a loan of \$5,000,000, the proceeds of which were to be employed in constructing a system of public improvements. This was in pursuance of a policy outlined in the Governor's message, and in keeping with the spirit of the times, but it ultimately brought the State into difficulties, the settlement of which gives her a place in this book.

The times were unfavorable for the negotiation of a loan, owing to the suspension of specie payments throughout the Union and the general feeling of insecurity caused by the crisis. The Governor visited the New York market with little

¹ See Tenth Census, vol. vii. p. 634.

success, but upon his return received communications from the Morris Canal and Banking Company offering him ninety-seven and one-half cents per dollar for the bonds. Since the law did not permit him to sell below par, he hired the company to sell the bonds as agent for the State at a commission of two and a half per cent. Under this contract bonds to the amount of \$1,362,000 were sold, and the proceeds paid into the State treasury. The residue of the bonds were turned over by the company to the United States Bank of Pennsylvania, and said bank agreed to become guarantor for three-fourths of the sum. This amounted to a partial sale of the bonds on time, but the bank failed before any considerable amount of money had been paid into the treasury.

On account of these disasters the State was unable to meet her interest payment in July, 1842. Investigation showed that bonds to the amount of \$1,387,000 had been sold and paid for in full, and that upon others, namely, those pledged as security for loans to it by the United States Bank of Pennsylvania, only partial payments had been made.

An act¹ passed Feb. 17, 1842, provided for the adjustment of the loan in the following manner: The auditor general and treasurer were required to make out a full and accurate statement of the amount of money received by the

¹ Laws of Michigan for 1842, p. 102.

State for the bonds upon which partial payments had been made, and to add thereto interest at the rate of six per cent per annum to July 1, 1841. From this they were to deduct a percentage—which they should deem just—for the damages brought upon the State by the failure of the contracting parties to pay the instalments still remaining due on the loan. The Governor was then authorized to issue a proclamation requiring the holders of bonds to deliver to the treasurer for cancellation those for which the State had received no equivalent, or to deliver to him all the bonds they might hold, and to receive in return other bonds for the amount found to be their due. The auditor and treasurer were further authorized to negotiate with the bondholders for the sale of the railroads and other public works belonging to the State, and also of the public lands which had been received by the State under a recent act of Congress.

The amount ascertained to be due on the part-paid bonds was \$302.73 per one thousand dollars. All but a few thousand dollars' worth of these have been surrendered, and new bonds issued in their stead.

The State has always declared her willingness and her obligation to pay every bond for which she had received consideration, although the money was squandered in works for which she received no benefit. Her case would have been

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entirely sound, and her action fully justified, had it not been for the fact that the Morris Canal and Banking Company and the United States Bank of Pennsylvania had sold some of the bonds to innocent persons. That they had a right to transmit ownership in the bonds cannot be questioned. The fact that the State had not received her pay for them did not interfere with the title of the European bankers who had paid the United States Bank of Pennsylvania for them in full.

VI.

REPUDIATION IN VIRGINIA.

CHAPTER VI.

REPUDIATION IN VIRGINIA.

THE Civil War left the State of Virginia with an enormous debt. In 1861 it amounted to more than \$33,000,000, and with accrued interest it amounted on Jan. 1, 1870, to more than \$45,-000,000. Arrangements for the refunding of this debt, and for the making of provisions for the payment of the annual interest charge, as well as the ultimate payment of the principal, early occupied the attention of the legislature of the State, and the result was the passage of the funding act of 1871.¹

This act divided the debt into two parts. One-third was set aside as West Virginia's share of the joint indebtedness of the two States before they were separated. For these bonds certificates were issued setting forth that "payment of the amount, with interest thereon at the rate prescribed in the bonds surrendered, will be provided in accordance with such settlement as shall hereafter be made between the States of Virginia and West Virginia," and that "the State of Virginia holds said bonds,

¹ *Acts of Virginia for 1870-71*, p. 378.

so far as unfunded, in trust for the holder or his assignees."

This provision amounted to a repudiation of all these bonds, the blame for which belongs either to Virginia or West Virginia, or both. No settlement between these two States has ever been made, all attempts having failed through the irreconcilable character of their views concerning a just distribution of the burden. Virginia has persistently claimed that West Virginia's just share was one-third, on the ground that she took away from the old State about one-third of her territory and population. West Virginia, on the other hand, has claimed that inasmuch as the greater part of the money borrowed on the security of the bonds was expended in public improvements within the borders of Virginia, she ought to pay only the debt contracted in making improvements within her borders, together with her proportion of the current expenses since 1824, after being credited with all the State taxes paid into the treasury since that date by the counties of which she is composed. Up to date neither party has seen fit to yield enough to make a compromise possible; and, in view of the fact that the matter has now for several years been dropped out of discussion, it is probable that the holders of these bonds will never receive a single cent of their just and undisputed dues.

For the two-thirds of the debt considered Vir-

ginia's share, the act of 1871 provided that new bonds payable in thirty-four years, and bearing interest at six per cent, should be issued; that these bonds should be either coupon or registered; and that the coupons should be receivable at and after maturity for "all taxes, dues, debts, and demands due the State." One class of bonds, the so-called five per cent dollar bonds, were excepted from the provision which fixed the rate of interest at six per cent, and were made to bear five per cent interest, the same rate as formerly.

This act was the immediate occasion of the debt controversy which has continued up to the present time, but which we may hope is now at an end. Two views were at that time held regarding the duty of the State to her creditors, and regarding the policy which she ought to pursue. The one was that the State was holden for and in duty bound to pay the principal of the old debt and the interest that had accrued during the war and the subsequent period, and that the rate of interest in the future should be not much if any less than that yielded by the old bonds. The act in question carried out this view. It provided for the funding of the overdue interest certificates and coupons, as well as for the bonds themselves, and all the new bonds were to bear six per cent interest, except those given in exchange for the bonds which had only yielded five per cent. This view was held by those who regarded the State's

honor as of the first importance, and who looked at the matter from the bondholders' standpoint. The clause which provided that the coupons of the consols, as the new bonds were called, should be receivable for taxes and other dues to the State was doubtless intended to offset that clause of the act which was displeasing to the bondholders; namely, the clause which compelled them to accept for one-third of their bonds certificates which were to be paid by West Virginia.

Other persons viewed the debt question from the standpoint of the immediate interests of the State. They were impressed by the fact that the assessed valuation of property in the State for taxation purposes was less than one-half of what it had been before the war, and that the income of the State had diminished from \$4,000,000 to about \$2,500,000. The settlement provided for by the act of 1871 placed upon this comparatively small revenue an interest charge of more than one and one-half millions of dollars, and left for the payment of the regular expenses of the State a very inadequate sum. In the opinion of such persons the problem could only be solved by a great reduction in the rate of interest to be paid, or by a reduction of both principal and interest. The masses seemed to take this view of the matter. At any rate, the legislature which met in 1872 inaugurated an attack upon the funding act of 1871 which was renewed at intervals for sixteen years.

This attack was directed against the clause which made the coupons of the consols receivable for taxes and other dues to the State. In March an act¹ was passed which provided that collectors should receive in payment of taxes gold, silver, United States treasury notes or notes of the national banks of the United States, and *nothing else*, and which repealed all laws in conflict thereto. It was thought that thus the objectionable clause could be gotten rid of, but unfortunately the time had passed when its repeal was possible. By Dec. 1, 1871, \$21,610,691 of consols had been issued.² Each one of these bonds represented a valid contract between the State and its holder, which bound the former to receive the coupons in payment of taxes and all other dues to the State. The act of 1872 was clearly a violation of this contract. It was so regarded by the bondholders from the first, and it was so declared by the Supreme Court of Appeals of the State at its November term of 1872.³ The court declared in unmistakable language that the act of 1871 constituted a valid contract between the State and the holders of bonds and coupons, and that the act of March 7, 1872, so far as it conflicted with this contract, was void and of no force.

¹ Acts of Virginia for 1871-72, p. 141.

² Tenth Census, vol. vii. p. 558.

³ See Antoni v. Wright, 22 Gratt., 833.

After the rendition of this decision, and up to the legislative session of 1873, the treasurer was obliged to receive coupons in payment of taxes. Meantime the necessity of either lowering the interest charge, or of increasing the State's income, became more apparent. Each year a portion of the interest had been left unpaid,¹ the arrearage on Jan. 1, 1874, amounting to \$2,600,000. The payment of coupons cut from the bonds and owned by tax-payers could not be avoided, but the interest on the "pealer debt"² could be and was neglected. The panic of 1873 was a heavy blow to the financial interests of the State. It prostrated business, destroyed sources of taxation, and diminished the revenue.

The legislature of 1873 had to face the same problem as its predecessor, but it was obliged to proceed in the full consciousness of the fact that the act of 1871 was irrepealable, and that coupons must be received in payment of taxes. Attempts to reduce the interest having proved unavailing, the only resort was to heavier taxation. In searching about for new objects upon which to levy taxes, the legislators readily bethought themselves of the

¹ See Acts of Virginia for 1871-72, p. 218; also *American Law Review*, vol. xxiii. p. 926.

² The creditors who accepted the funding act after March 7, 1872, accepted it subject, of course, to the Amendatory Act of that date. (*Wise Brothers v. Rogers*, 24 Gratt., 169.) They received what are known as "Pealer Bonds."—*American Law Review*, vol. xxiii. p. 927.

consols and their coupons. What they had failed to accomplish by the act of 1872 might possibly be carried out, it was thought, by a law which would include these bonds and coupons under the head of taxable property. Accordingly an act¹ was passed on March 25, which authorized the State treasurer to deduct from the interest payable on the bonds, whether funded or unfunded, a tax equal to fifty cents per one hundred dollars of their market value, and which made it the duty of every officer of the State charged with the collection of taxes to deduct such tax from matured coupons which might be tendered in payment of dues to the State.

The controversy which had been settled for a time by the decision of the Supreme Court of Appeals was now resumed. This act was interpreted as a second attempt to violate the contract of 1871. Foreign holders of bonds felt themselves aggrieved by being compelled to pay taxes on money which they had lent to the State. Their arguments availed with the legislature of the following year, which amended the act of 1873 so as to make it non-applicable to foreigners.² This, however, did not remove their grievance.

¹ Acts of Virginia for 1872-73, p. 207. "An earlier act, that of April 5, 1872, provided that the tax should be deducted from coupons paid by the State, but did not provide for such deduction from coupons presented in payment of taxes. The present act remedied this oversight."

² Acts of Virginia for 1874, p. 300.

The tax had greatly injured the market value of coupons. Tax-payers had heretofore been quite willing to buy them at a small discount, but now the discount must be great enough to cover the tax also, else they would not buy. In reality the bondholders still had to pay the tax, or take their chances on getting their coupons cashed at the treasury, and their prospects became worse each day. All bondholders who were not themselves tax-payers had this grievance, and were not slow in making it known. They won strong supporters among the people, but the legislatures of 1875 and 1876 continued to oppose them. In the latter year a law¹ was enacted which restored the act of 1873 to its original scope, and made the tax applicable to all bonds and coupons by whomsoever held. The bondholders now appealed to the courts, and in the celebrated case of *Hartman v. Greenhow*,² tried first before the Supreme Court of Appeals of the State, and then before the Supreme Court of the United States, they gained a second victory, and baffled once more the attempts of the re-adjusters to nullify the legislation of 1871.

The Supreme Court of the United States held that the act of 1876 violated the contract made with the bondholders in 1871 in so far as it applied to coupons separated from the bonds and held by a different owner. In delivering the opin-

¹ Acts of Virginia for 1875-76, p. 203.

² 102 U.S., 672.

ion of the court Mr. Justice Field said, "The act of 1876 declares that the coupons shall not be thus received for taxes and dues owing by the holders of them for their full amount, but only for such portions as may remain after a tax subsequently levied upon the bonds to which they were originally attached is deducted, though the bonds be held by other parties. If this does not impair the contract with the bondholder, who was authorized to transfer to others the coupons with this quality of receivability for taxes annexed, and also the contract with the bearer of the coupon written on its face that it shall be received for all taxes to the State, it is difficult to see in what way the contract with either would be impaired, even though the tax on the bond should be equal to the whole of its coupon. If, against the express terms of the contract, the State can take a portion of the interest in the shape of a tax on the bond, it may at its pleasure take the whole." (p. 685.)

Since 1872 the legislature had been in the control of the readjusters, as the enemies of the funding act of 1871 were called. To this category belonged adherents of both political parties, and the struggle up to this time had been carried on within these party lines. This fact clearly indicates that public opinion had condemned the funding act of 1871. Subsequent legislation also lends support to this view. But it will not answer to conclude from this that a majority of the people

of Virginia were in favor during these years of cheating the bondholders out of their rightful dues. The so-called re-adjusters of this period really included in their ranks representatives of two views. The old party, to which belonged those who believed that the funding act of 1871 ought to remain as the final settlement with the bondholders, had grown smaller year by year, as the logic of facts had demonstrated more and more clearly that the State could not pay so heavy an annual charge without loading the people with too great a weight of taxation.¹

All who did not belong to this party were re-adjusters, and of these we may distinguish two parties, moderates and radicals. The former held that the State was in duty bound to pay every dollar of her indebtedness, accrued interest as well as principle, but that in view of her misfortunes she might with propriety call upon the bondholders to accept a rate of interest considerably lower than that yielded by the consols and the pealers. The radicals held that the State was under no obligations to pay the interest that had accrued during the Civil War and the period of reconstruction, and that the bondholders ought to be given the alternative of accepting bonds bearing

¹ The annual deficit was at least \$800,000 when the tax rate was fifty cents per one hundred dollars. It would have required an additional levy of from twenty-five to thirty cents per one hundred dollars to meet this deficiency. (See *Financial Chronicle* for Dec. 14, 1878.)

a lower rate of interest and in amount equal to the principal of the debt as it stood at the outbreak of the war, or of submitting to the repudiation of all their claims. In the legislative sessions of 1878 and 1879 the adherents of these two views came into conflict with each other, and with this the debt controversy entered upon a new phase.

The adverse decisions of the courts, which had practically nullified all legislation on the debt question since 1871, discouraged in the moderates further attempts to invalidate the coupons of the consols, or to impair in any other way the funding act of that year. The more rational plan seemed to be to enter into negotiations with the bondholders, with a view to inducing them to accept a lower rate of interest and other terms more favorable to the State. Conferences held before the legislative session of 1879, and correspondence with foreign bondholders and others, revealed a willingness on the part of the latter to accept a reasonable compromise. Indeed, it was evident to all reasonable persons that a new funding act which should be acceptable to bondholders and to the State alike was the only practicable solution of the problem. When the legislature met in 1878, a proposition was submitted containing the terms of the bondholders, and after some immaterial modifications it was embodied in the McCulloch bill,¹ which passed the assembly and received the Governor's signature.

¹ Acts of Virginia for 1878-79, p. 264; also Appendix IV.

In substance this act provided for the issue of new bonds which were to be exchanged for outstanding bonds dollar for dollar, and were to bear interest at three per cent for ten years, four per cent for twenty years, and five per cent for ten years, making an average rate of four per cent for the forty years. The act further provided that all due and unpaid interest might be funded in the new bonds at the rate of fifty cents on the dollar, and that the coupons of these new bonds should be receivable for taxes. The terms of the act were to be regarded as a contract between the State and the bondholders on the conditions expressed in the following clause: "The said corporations may present for funding . . . at least eight millions of dollars of the outstanding obligations of the State prior to the first day of January, 1880; and during each period of six months from and after the 31st day of December, 1879, they may present an additional amount of at least five million dollars, until the whole debt is funded. . . . But if the said corporations shall fail to file with the Governor their assent and agreement as aforesaid by the first day of May, 1879, or shall fail to present for funding the outstanding bonds in the proportion and amount and during the periods hereinbefore specified, then the governor may, in his discrimination, make a like contract with responsible parties for the funding of the debt by the State under this act."

The bondholders at once complied with the terms of this clause and eventually funded a little over eight million dollars of their bonds, thus making the new contract binding upon the State.¹

To an unprejudiced observer this act seems to have had the merits of fairness and practicability. It satisfied the creditors and brought the annual interest charge down to a figure which the income of the State at the time warranted the people in concluding that they could pay, with at most a small increase in the burden of taxation. A writer in the *North American Review* three years later said :² "After the whole had been exchanged, the interest for the first ten years would have been less than a million dollars a year, and could have been paid in full with the revenues then accruing, which were sufficient in addition to pay all the expenses of the schools and of the government in all its branches, and leave a considerable surplus to be applied annually to the purchase and cancellation of bonds."³

The re-adjusters, however,—and this title should now be applied only to the radicals,—were not at

¹ Tenth Census, vol. vii. p. 559.

² See John W. Johnson's "Repudiation in Virginia" in *North American Review* for February, 1882.

³ This statement probably presents too rosy a view of the situation. The Governor, in his message to the legislature, estimated that an additional tax of ten cents on the hundred dollars would be needed to meet the interest charge imposed by an act in substance the same as this.—See *Financial Chronicle* for Dec. 14, 1878.

all pleased with the act. They were obstinately bent on not allowing any consultation or arrangement with the creditors, and were determined to go ahead, regardless of them, and compel them to take whatever measure they chose to pass. The principle at the basis of this bill which recognized the duty of the State to pay the accrued interest as well as the principal, and the clause which made coupons receivable for taxes, were both repugnant to them. Before the bill became a law they met in convention and organized themselves into a political party. Their platform declared undying hostility to this or to any measure which did not reduce the principal of the debt. They entered at once upon a vigorous political campaign, and succeeded by the November elections in bringing the majority of the people of the State to take their view of the matter. When the legislature met in December, the re-adjusters had a majority in both branches. H. H. Riddleberger, afterwards United States senator, was their leader, and introduced the famous bill which bears his name, and which finally won the adherence of the people of Virginia irrespective of party.

In the preamble of the bill the following statement is made: "It is confidently believed that the people of this State will never acquiesce in any settlement which shall obligate them and their posterity to pay *any* part of the interest upon the public debt which accrued during the war and the

period of reconstruction." The bill enacts that the debt shall be scaled from \$31,102,571 to \$19,665,196, and justifies this as follows: The estimated debt at the time of the passage of the funding act of March 30, 1871, included \$15,025,604 of capitalized interest, or about one-third of the debt as at that time reckoned. Not only was the debt in 1880, therefore, too large by \$15,025,604, but also by the interest on that sum which had accumulated and been funded. After going through a complicated calculation on this basis, the framers of the bill fixed the true figure of the just debt at \$19,665,196. The bill further stated that the State revenues could not be pledged in advance, meaning thereby that that portion of the revenues for which no other use should be found should be devoted to the payment of debt obligations. This bill passed both branches of the legislature, but was vetoed by the Governor, and failed to become a law at this time. One great purpose of the re-adjusters had, however, been accomplished by the agitation since 1879. They had put a stop to funding operations under the McCulloch act, and had made the debt question the foremost political issue in the State. The next campaign was to be fought out on this line, and the re-adjusters were confident of their ability to gain control of the executive as well as the legislature. At their convention in June, 1881, they declared it to be their purpose to pass the Riddleberger bill in case they

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"Whereas bonds purporting to be bonds of this commonwealth, issued by authority of the act of March 30, 1871, . . . and under the act of March 28, 1879, . . . are in existence without authority of law;

"And whereas other such bonds are in existence which are spurious, stolen, or forged, which bonds bear coupons in the similitude of genuine coupons, receivable for all taxes, debts, and demands due the commonwealth;

"And whereas the coupons from such spurious, stolen, or forged bonds are received in payment of taxes, debts, and demands;

"And whereas genuine coupons from genuine bonds, after having been received in payment of taxes, debts, and demands are fraudulently re-issued and received more than once in such payments;

"And whereas such frauds on the rights of the holders of the aforesaid bonds impair the contract made by the commonwealth with them that coupons should be received in payment of all taxes, debts, and demands, and at the same time defraud her of her revenue;

"Therefore, for the purpose of protecting the rights of said bondholders, and of enforcing the said contract between them and the commonwealth, preventing frauds in the revenue of the same,

"Be it enacted," etc.

carried the State, and they nominated for lieutenant-governor an ex-United States senator who had been a union soldier during the war and a Republican ever since, and who was at the time United States marshal for the western district of Virginia. The Democrats met in convention a little later, declared their adherence to the McCulloch bill, and nominated for State officers men in sympathy with their views. The Republicans met in convention last of all, and, upon the advice of Mr. Mahone, endorsed the ticket of the re-adjusters. With this accession to their ranks the latter won the victory at the elections, and prepared themselves fully to carry out their promises to the people.

The legislative session of 1882, next to that of 1871, was the most important in the history of the controversy. During its passage three laws were enacted which became the basis for the future operations of both the bondholders and the re-adjusters. The latter embodied in these laws all the measures which they had advocated since 1871, regardless of the decisions of the highest court of the State and of the Supreme Court of the United States. The first two of these acts¹ are known as the "Coupon killers." One was passed Jan. 14 and the other Jan. 26.

The former is entitled "An act to prevent frauds upon the commonwealth, and the holders of her

¹ Acts of Virginia for 1881-82, pp. 10, 37.

securities, in the collection and disbursement of revenues," and its preamble reads as follows:—

"Whereas bonds purporting to be bonds of this commonwealth, issued by authority of the act of March 30, 1871, . . . and under the act of March 28, 1879, . . . are in existence without authority of law;

"And whereas other such bonds are in existence which are spurious, stolen, or forged, which bonds bear coupons in the similitude of genuine coupons, receivable for all taxes, debts, and demands due the commonwealth;

"And whereas the coupons from such spurious, stolen, or forged bonds are received in payment of taxes, debts, and demands;

"And whereas genuine coupons from genuine bonds, after having been received in payment of taxes, debts, and demands are fraudulently re-issued and received more than once in such payments;

"And whereas such frauds on the rights of the holders of the aforesaid bonds impair the contract made by the commonwealth with them that coupons should be received in payment of all taxes, debts, and demands, and at the same time defraud her of her revenue;

"Therefore, for the purpose of protecting the rights of said bondholders, and of enforcing the said contract between them and the commonwealth, preventing frauds in the revenue of the same,

"Be it enacted," etc.

The bill provides that, when coupons are presented in payment of taxes, the collector shall receive them only for purposes of identification and verification; that he shall collect the tax in gold or silver, legal-tender notes or national bank notes; and that he shall then deliver the coupons to the court of the county or the city in which the tax-payer lives. The latter shall then be at liberty to bring suit against the State for the purpose of compelling her to receive them in payment of his taxes, the right of appeal to the Circuit Court and from that to the Supreme Court of Appeals of the State being allowed to both parties. In case it shall be decided by the court or courts that the coupons are valid, then they shall be received by the State treasurer, and the money previously paid refunded to the tax-payer. The bill further provides that in case a writ of *mandamus* has been applied for by the tax-payer, its execution shall be delayed until the above-mentioned proceedings before the courts shall have been completed.

The second of the coupon killer acts deprived the tax-payer of the writ of *mandamus* or of any other remedy except the one described in the first act. It virtually placed before him the alternative of establishing the validity of his bonds in the manner described, or of paying his taxes in the regular currency of the country without further ado.

On the 14th of February the legislature com-

pleted its work on the debt question by the passage of the Riddleberger act in substantially the form in which it was presented in the session of 1880.¹

These three acts considered in the order in which they were passed indicate very clearly the purpose of the re-adjusters, and certainly do credit to their ingenuity. The first one, while purporting to protect the State against forged, stolen, and fraudulently re-issued coupons, was really aimed at the same goal as the acts of 1872 and 1873, which were declared unconstitutional by the courts. It was well known that no tax-payer would undertake the risk and expense of three lawsuits in order to prove the validity of his coupons. In many cases the expense would more than cover their value, and in any case the tax-payer would have to take the chances of getting his coupons cashed at the treasury after they had been declared good by the courts. The second act simply supplemented the first one, and rendered the case of the coupon-holder more hopeless by denying him the ordinary remedies against officers who refused to accept what constituted a legal payment of taxes. The framers of these bills had very carefully studied the decisions of the court in the case of *Antoni v. Greenhow*, and had ingeniously contrived to avoid the constitutional difficulties which had wrecked the acts of 1872 and 1873. Having, as they

¹ Acts of Virginia for 1881-82, p. 88; also Appendix IV.

hoped, completely destroyed by these acts the value of the coupons heretofore declared receivable for taxes by the statutes of the State and by the courts, they were inclined to believe that the bondholders would accept the Riddleberger act as their last and only alternative. In this belief, however, subsequent events prove them to have been mistaken. Comparatively few bonds were ever funded according to the provisions of the Riddleberger act. The majority of the bondholders refused to accept the settlement which it offered, and proposed to test in the courts the constitutionality of the "coupon-killer acts."

In the prosecution of this purpose the celebrated "Virginia coupon cases"¹ were brought before our Supreme Court, and a number of decisions elicited which are exceedingly important on account of their bearing on several vexed questions of constitutional law, as well as on the debt question. There are nine of these cases, all but one of which, however, are covered by two decisions, the first one delivered in the case of *Antoni v. Greenhow*² in March, 1883, and the other in the case of *Poin-dexter v. Greenhow*³ in April, 1885.

¹ Several other cases involving the same points and decided in the same way came before the Supreme Court of the United States in February, 1886; namely, *Barry v. Edmunds*, 116 U. S., 550; *Claffin v. Taylor*, 116 U. S., 567; *Royall v. Virginia*, 116 U. S., 572; and *Sands v. Edmunds*, 116 U. S., 585.

² 107 U. S., 769.

³ 114 U. S., 270.

The case of *Antoni v. Greenhow* is as follows: In March, 1882, Andrew Antoni tendered for taxes a coupon of 1871, and, when the collector refused to accept it as payment, applied to a State Court for a *mandamus*. The judges of this court could not decide the question on account of a tie vote, and the case was appealed to the Supreme Court of the United States. Chief Justice Waite delivered the opinion of the majority of the court, and held that, in accordance with the principle laid down in the case of *Hartman v. Greenhow*, the State was bound to accept these coupons, but forthwith added that "so long as the State legislature did not impair any substantial contract, it could change the form of the remedy, and that the right to appeal to the State Court for adjudication upon the validity of the coupon left to the creditor an adequate remedy." "No attempt has been made," said Chief Justice Waite, "to fix definitely the line between alterations of the remedy which are deemed legitimate, and those which, under the form of modifying the remedy, impair substantial rights. . . . In all such cases the question becomes, therefore, one of reasonableness, and of that the legislature is primarily the judge." Further on the judge explains his meaning more fully in the following words: "It matters not whether the coupons have been refused for the taxes, if full payment of the amount that they call for is actually made in money. A remedy, therefore, which

is ample for the enforcement of the payment of the money, is ample for all the purposes of the contract. That, we think, is given by the act of 1882 in both forms of proceeding."

Three of the Justices dissented from this opinion, but it remained the law of the Supreme Court, and future cases were decided in accordance with it. The readjusters regarded this opinion as an important victory for them, but, since the point involved in this case pertained simply to the right of a tax-payer to receive a writ of *mandamus* compelling the tax-collector to receive his coupons in payment of taxes before he had established their validity in the manner described by law, it did not affect the tax-receivable character of the coupons, and it still left to the bondholder an opportunity to force their acceptance by another method of procedure; namely, by refusing to pay, after having tendered coupons, and then applying for an injunction in case the collector levied upon his property, or by bringing suit for the recovery of his property in case it had been attached. This method of procedure was made effective by the Supreme Court in the case of *Poindexter v. Greenhow*. Before describing this decision, however, we must take note of the further attempts, made in the legislative session of 1884, to render these coupons worthless.

Four acts were passed by this legislature having this object in view. They were approved respect-

ively on March 12, 13, 15 and 19.¹ The first made it the duty of the attorney for the commonwealth to defend all suits brought by tax-payers, and, in case they were decided against the State, to appeal them from one court to another so long as that was possible. The second one deprived the tax-payer of the right to bring an action for trespass against a tax-collector who should levy upon his property after he had tendered coupons and refused to pay in currency. The third act declared that no person should sell tax-receivable coupons without a special license, the fee for which should be \$1,000 for each business place kept open for that purpose, and twenty per cent of the face value of all coupons sold. The act of March 19 required that in the case of all coupons received for taxes, a sum equal in amount to the difference between said coupons and the coupons of corresponding Riddleberger bonds for which they might have been exchanged should be charged to the bonds from which they were cut as payment on the principal.

The eight coupon cases decided in April, 1885, involved some of these laws, as well as the so-called "coupon-killers" previously described. The decision in *Poindexter v. Greenhow* gives us the opinion of the court on most of these laws.

Mr. Poindexter tendered coupons in payment of taxes to collector Greenhow of the city of Rich-

¹ Acts of Virginia for 1883-84, pp. 504, 527, 590, and 721.

mond, and upon the latter's refusal to receive them except for identification and verification, he refused to pay the tax in currency as the act of Jan. 14, 1882, required. Collector Greenhow, in obedience to another law, levied upon the property of Mr. Poindexter to satisfy the tax claim. Suit was then brought for recovery of the property, Poindexter claiming that the tender of his coupons constituted a legal payment of his taxes. Mr. Justice Matthews delivered the opinion of the court, and on the points at issue made the following statements: "The act of the General Assembly of Virginia of Jan. 26, 1882, 'to provide for the more efficient collection of the revenue to support government, maintain the public schools, and pay interest on the public debt,' requiring tax-collectors to receive in discharge of the taxes, license taxes, and other dues, gold, silver, United States treasury notes, national bank currency, and nothing else, and thereby forbidding the receipt of coupons issued under the act of March 30, 1871, in payment therefor, although it is a legislative act of the government of Virginia, is not a law of the State of Virginia, because it impairs the obligation of its contract, and is annulled by the Constitution of the United States.

"The State has passed no such law, for it cannot; and what it cannot do in contemplation of law it has not done. The Constitution of the United States and its own contract, both irrepealable by

any act on its part, are the laws of Virginia, and that law made it the duty of the defendant to receive the coupons tendered in payment of taxes, and declared every step to enforce the tax thereafter taken to be without warrant of law, and therefore a wrong. This strips the defendant of his official character and convicts him of a personal violation of the plaintiff's rights, for which he must personally answer."

This decision practically annulled most of the obstructive legislation of 1882 and subsequently, inasmuch as it protected coupon-holders against attacks on their property for the satisfaction of tax claims after they had tendered coupons in payment of their taxes. It mattered not to the tax-payer that his coupons were not accepted, if, after their tender for taxes, he could not be forced to pay in money. It did not, however, dismay the legislators. They seemed bent on legislating against the coupons, even though their previous attempts to kill them had been ignominious failures. In the legislative sessions of 1886 and 1887 another batch of laws was enacted, designed to impose obstructions and impediments in the way of using the tax-receivable coupons. One of these acts¹ provided that expert evidence to prove the genuineness of coupons could not be employed. Another² that, when required, the bond from

¹ Acts of Virginia for 1885-86, p. 36.

² *Ibid.*, p. 40.

which the coupon was alleged to have been clipped must be produced, and the fact that the coupon was actually clipped from it established as absolute proof of its genuineness.¹ A third act made it a crime, punishable by fine and imprisonment, for any person by oral representation, writing, or printing to solicit or induce any suit or action against the State of Virginia. Still another act² provided that petitions for proceedings for the purpose of testing the genuineness of coupons must be filed within a year after the coupons fall due. The last of these acts was passed May 12, 1887.³ According to the decisions of the Supreme Court in 1885 and 1886, collecting officers were liable for punishment for proceeding against a person who had tendered coupons in payment of taxes. This act was intended to shield these officers, and accordingly it authorized suits to be brought against such tax-payers in the name of the commonwealth, and to be commenced by the serving of a notice on the party liable for the tax, or on his agent.

These acts were brought for review before the Supreme Court of the United States by a number of cases presented in the October term of 1889.⁴ After reviewing this and previous legislation

¹ Acts of Virginia for 1885-86, p. 384.

² *Ibid.*, p. 312.

³ *Ibid.*, 1887, p. 257.

⁴ See *McGahey v. Virginia*, 135 U.S., 667.

aimed at rendering the coupons useless, the court said: "The various acts of the Assembly of Virginia passed for the purpose of restraining the use of said coupons for the payment of taxes and other dues to the State, and imposing impediments and obstructions to that use and to the proceedings instituted for establishing their genuineness, do in many respects materially impair the obligation of that contract, and cannot be held to be valid or binding in so far as they have that effect." The court was obliged to say, however, that the State had a right to test the validity of coupons, and that on account of the eleventh amendment to the constitution of the United States, individuals were estopped from bringing suits against the State, even in case they thought their rights had been seriously infringed. The decision, therefore, did not nullify or weaken the act of May 12, 1887.

Since 1889 the State has brought hundreds of suits against tax-payers who have presented coupons in discharge of their obligations.¹ Very often the latter have been able to meet all the requirements for establishing the validity of their coupons, and thus to force the State to accept them; but in the majority of cases probably the requirements could not be met and the coupons were rejected. At any rate, the number of coupons received at the treasury during the years 1889 and

¹ See *Financial Chronicle* for Jan. 5, 1889.

1890 were insignificant compared with the number which were presented.¹

Notwithstanding all this hostile legislation, the majority of the people of Virginia have for a long time honestly desired a settlement of the debt question which would satisfy all parties concerned. They have appreciated the injury to the State's credit and the hindrance to her industrial progress which the long controversy has occasioned, and have been eager to bring it to a close. No better proof of this is needed than the legislation of the General Assembly which met in December, 1891, and adjourned in March, 1892, and the events which preceded it.

March 5, 1890, the General Assembly selected by joint resolution a debt commission to receive proposals for funding the debt, and instructed its members to make an agreement with the bondholders on the basis of the principles laid down in the Riddleberger bill. The commission met a committee of the bondholders June 2, 1891, and again on Nov. 17, and, after much discussion, made the following agreement: "We will recommend (to the legislature) a proposition to issue a maximum amount of \$19,000,000 to be exchanged for outstanding obligations of the State mentioned

¹ Coupons were received at the treasury as follows:—

1883 . . .	\$40,540	1887 . . .	\$81,620
1884 . . .	172,997	1888 . . .	258,938
1885 . . .	50,164	1889 . . .	214,580
1886 . . .	56,186	1890 . . .	116,782

in the Riddleberger act (other than those held by schools and colleges) now in the hands of the public, but not including bonds already funded under this act, such new bonds to run for one hundred years, and to bear two per cent interest for ten years, and three per cent interest for ninety years. The bonds and interest obligations shall be of the same general character as those provided by the Riddleberger bill, and it is distinctly understood that the coupons or other interest obligations are not to be receivable for taxes. The proposed new bonds shall be exchangeable for the outstanding obligations aforesaid in the proportion of nineteen of the former for twenty-eight of the latter. This recommendation is of course to be conditional on the understanding that your committee hold and has the authority to exchange the obligations mentioned in the previous communication to us, amounting to at least \$23,000,000."

The bondholders' committee accepted these terms, and assumed the obligation of presenting for funding under the new arrangement the amount of bonds mentioned.

The report of the commission, together with the message from the Governor, was presented to the legislature on Jan. 14, 1892, and its chief recommendations were embodied in a bill which passed the General Assembly Feb. 18.¹

In his message the Governor showed that the

¹ *Acts of Virginia for 1891-92*, p. 533.

proposed settlement was more favorable to the State than any which had been offered, and that the interest charge which it involved could be met without any increase in the rate of taxation.¹ The new bill provides for a sinking fund of one-half per cent in the year 1910, which is to be increased to one per cent in 1930, and it gives the State the right to redeem the new issue after the year 1906. Unless some unforeseen calamity intervenes, there is every reason for believing that this will constitute a final settlement of the long-continued debt controversy.²

¹ According to the Governor, the annual interest charge under the proposed settlement will be \$562,437.27, while the interest charge imposed by the Riddleberger act was \$633,686.53; that imposed by the McCulloch act was \$1,249,083.35; and that imposed by the funding act of 1871 was \$1,899,450.90.

² The time during which bondholders were permitted to deposit their bonds with the Sinking Fund Commissioners for settlement according to the terms of the act of Feb. 20 expired Dec. 31, 1892. At that time only a small percentage of the whole amount outstanding had not been deposited. These bonds, according to the act, are outlawed, and cannot be revived except by act of the legislature. — *Financial Chronicle*, Dec. 24, 1892.

VII.

THE CAUSES OF REPUDIATION.

CHAPTER VII.

THE CAUSES OF REPUDIATION.

THE phase of financial history which has been described with considerable detail in the preceding chapters must now be viewed as a problem for solution. We have stated the facts, and we must now seek their explanation. The universality of the repudiation movement in the South, and the fact that in all but two cases it appeared in each of the States affected at nearly the same time, suggest common causes, and invite an investigation below the surface of the facts which have been presented. It is only when we view the facts as one whole and attempt their classification and analysis that their true meaning and explanation become apparent. It is the purpose of the present chapter to reveal the general causes of repudiation, and to determine their permanent or adventitious character.

As a rule, the repudiating States have attempted to shield their honor behind the bulwark of the law. Only in one or two cases have they let their debts go by default without so much as attempting a legal justification of their acts. We have seen

that in some cases the alleged illegality of the bonds repudiated was a mere pretext, without any real foundation in fact; but that in others the allegations were true. Of this latter class of cases Arkansas, Georgia, and South Carolina furnish us with examples. In the first-mentioned State the ayes and nays had not been recorded in the case of the law authorizing some of her bonds, whereas her constitution expressly provided that they should be recorded. A subsequent act of the legislature deprived the State of all moral justification for repudiation, but could not affect the constitutionality of it.

In the issue of the railroad bonds which Georgia had indorsed, and was called upon to pay, a variety of irregularities had been practised. Those issued to the Alabama and Chattanooga Railroad were second mortgage bonds, and the constitution provided that the State's indorsement should be placed only upon first mortgage bonds. The act authorizing the State's indorsement of the bonds of the Bainbridge, Cuthbert, and Columbus Railroad provided as a condition of such indorsement that twenty miles of said road should first be completed. As a matter of fact, however, not a foot of the road was ever built, while the bonds were issued, indorsed, and negotiated. As a condition of the issue of bonds in aid of the Cartersville and Van Wirt Railroad, the act provided that an equal amount must be invested by private parties.

Legislative investigation showed, however, that the bonds had been issued in entire disregard of this clause of the law. The name of the Cartersville and Van Wirt Railroad was changed to that of the Cherokee Railroad, and new bonds were issued to it under the new name, though all that the law authorized had been issued to the road under the old name.)

(The illegality discovered in South Carolina consisted in one case in the issue of \$2,000,000 of bonds under an act which authorized the issue of only \$1,000,000, and in another case in the unconstitutionality of an act passed for the relief of the treasury.¹)

For the purpose of our investigation into the legal justification of the States in the repudiation of these and similar issues, they may be classified under the following heads: —

1. Those which were not authorized by any law.
2. Those which were authorized by laws which were unconstitutional.
3. Those in which the laws authorizing them had not been strictly complied with.

The point to be decided in each of these cases is whether the *State* or *innocent bondholders* should have been made to suffer any loss that the illegality in question entailed. In cases in which a State is one of the parties we have very few legal decisions to guide us to the opinions of the courts on

¹ See page 91.

this point, for very few such questions have been adjudicated, owing to the immunity of States from suits brought by individuals. Cases of municipal bonds precisely similar, however, have been repeatedly tried in the courts, and from these we may discover the law upon the subject.

Cases coming under the first of the above heads are easy to decide. No court would hold a State responsible for bonds for the issue of which she had given no authority whatever. Purchasers are bound to see to it that the bonds in which they invest have been authorized by law. To fail here is a negligence for which they alone are responsible, and for which they must and should suffer. Of course an action for fraud might be brought against State officers who would presume to negotiate such bonds; but such an action would concern them as individuals, and not as State officials. The authority of the State's agents is of necessity defined by law, and the interests of good order and careful legislation, as well as the safeguards of liberty, demand that these laws should be strictly obeyed.

On this point Burroughs, on "The Law of Public Securities," p: 5, says: "All who deal with a public agent or officer must take notice of his powers. He derives his authority from the law which authorizes his appointment. No person may profess ignorance of the extent of the powers of a public agent. (*State v. Hays*, 53 Mo., 578). A private agent acting in violation of specific instruc-

tions, yet within the scope of a general authority, may bind his principal; the rule as to the effect of a like act of a public agent is otherwise. The latter is clothed with duties and powers specifically defined and limited by public law, ignorance of which cannot be presumed in favor of those dealing with him. This is the reason of the difference between public and private agents. The powers of the one can always be known; the other may not be."

Cases in which the law authorizing the issue is unconstitutional are more complicated. The decision is easy and simple, provided the law is declared by competent authority to be unconstitutional before the bonds are negotiated. Such a case would really belong under the first head, for a law which has been declared unconstitutional has no more binding force than if it had never been passed. But suppose the bonds have been regularly and properly negotiated, and have come into the hands of innocent purchasers, before the constitutionality of the law authorizing them has been questioned; and suppose further that the law, though plainly unconstitutional, has not been declared so by competent authority. It was under precisely such conditions as these that the repudiated unconstitutional bonds were issued. Are purchasers of bonds bound to consult the records in order to discover whether or not the constitution has been complied with in the passage of the law,

or is it sufficient for them to see to it that there is a law authorizing the bonds which they have purchased?

It must be admitted that the answer to this question is not easy. On the one hand, it may be asked of what good are constitutions unless the State insists upon their being complied with to the letter; and on the other hand, it may be asked whether the State is not estopped from pleading the unconstitutionality of a law by the action of her officers who negotiated the bonds, and by that act certified to their validity.

At this point it becomes necessary to distinguish carefully between the second and third classes of cases into which illegal bonds are classified,—in other words, between violations of a constitution and of a statute law. In the latter class of cases, as we shall presently show, the ordinary executive officers of the State are competent to decide whether or not the law has been complied with; in the former class of cases they are not. The power to decide concerning the constitutionality of a law, in all the States of our Union, has been conferred upon some court, and that court cannot, in the nature of the case, pronounce a decision until some case has been brought before it, and that may not happen until years after the bonds have been negotiated and have passed into the hands of innocent holders. Unless, after a law has been pronounced unconstitutional by competent authority,

it becomes of none effect, and all acts based upon it lose their binding force, it is difficult to see how constitutions render any protection to people of the State. The preservation intact of the protective character of the fundamental law of a State seems, therefore, to demand that, in the class of cases under discussion, the bondholders shall suffer the loss, unless other more important interests of the State are thereby jeopardized. The State constitution is a part of the law which defines the duties of officers, and purchasers of bonds are bound to see to it, not only that their purchases are authorized by a statute law, but that such a law does not conflict with the constitution of the State. The law relating to this point is summarized in "Law of Public Securities," by Burroughs, in the following words: "The defects of want of power arising from a violation of some constitutional provision are, however, of such a character that no defence avails the holder. That he has paid value for the bonds in good faith, and has no actual notice of the defect, is immaterial. Every person is bound to know the law, statute and constitutional, and this constructive notice is as effectal as an actual notice."

The third class of cases mentioned above brings to our attention irregularities in the compliance with laws authorizing the issue of bonds. The number of these is great; but one principle has directed decisions on such points in the case of

municipal bonds, and that alone needs to be considered. The question to be decided in these cases is, whether the holders need to go back of the recitals on the bonds, in case such recitals state that the law has been complied with. The first case brought before the Supreme Court of the United States involving this question was that of Knox County, Indiana, *v.* Aspinwall, *et al.*¹ Since this furnished the precedent which has been closely followed by that court, it will be worth while to give an account of it.

This county refused to pay bonds that had been issued in aid of a railroad on the ground that the county commissioners who issued them had failed to comply with that clause of the statute which required that certain notices be given before the matter was put to a vote of the people. The following is the opinion of the court: "Where the statute of a State provided that the Board of Commissioners of a county should have power to subscribe for railroad stock, and issue bonds therefor in case a majority of the voters of the county should so determine after a certain notice should be given of the time and place of election, and the Board subscribed for the stock and issued the bonds, purporting to act in compliance with the statute, it is too late to call in question the existence or regularity of the notices in a suit against them by the holders of the coupons attached to the

bonds, who are innocent holders in this collateral way. In such a suit, according to the true interpretation of the statute, the Board were the proper judges whether or not a majority of the votes in the county had been cast in favor of the subscription to the stock. The bonds on their face import a compliance with the law under which they were issued, and the purchaser was not bound to look further for evidence of a compliance with the conditions to the grant of the power."

In the case of *Colona v. Eaves*, 92 U. S. 484, Mr. Justice Strong confirmed the decision in the case of Knox County, etc., in the following words: "Where the legislative authority has been given a municipality, or to its officers, to subscribe for the stock of a railroad company, and to issue municipal bonds in payment, but only on some precedent condition, such as a popular vote favoring the subscription, and where it may be gathered from the legislative enactment that the officers of the municipality were invested with power to decide whether the condition precedent had been complied with, their recital that it has been, made in the bonds issued by them, and held by a *bona fide* purchaser, is conclusive of the fact and binding upon the municipality, for the recital is itself a decision of the fact by the appointed tribunal."

Mr. Justice Bradley, in *Humboldt Township v. Long, et al.*, 92 U. S. 642, says: "We have sub-

stantially held that if a municipal body has lawful power to issue bonds or other negotiable securities, dependent only on the adoption of certain preliminary proceedings, such as a popular election of the constituent body, the holder in good faith has a right to assume that such preliminary proceedings have taken place, *if the fact be certified on the bonds themselves by the authorities whose primary duty it is to ascertain it.*

Another case bearing upon the rights of *bona fide* bondholders was that of *Hackett v. Ottawa*, 99 U. S. 86. In this it was shown that the bonds had not been issued for the purpose prescribed in the act. The court held that in this case the bondholder was not compelled to go back of the recitals on the bonds. It said in substance that when the officers of a municipality recite in bonds issued by them that they are for a purpose municipal or public, this recital cuts off all inquiry as to the purpose for which they were issued.

In another case Chief Justice Waite said: "When the certificate of the proper officer is found on the bond, the purchaser need not inquire whether what has been certified to is true. As against a *bona fide* holder, the public is bound by what its authorized agents have done and stated in the prescribed form."¹

¹ *Antony v. County of Jasper*, 101 U. S. 693.

Our State courts have, in the main, followed the principle laid down in these decisions, though they have not given quite so broad an interpretation to the term "irregularities."¹ A distinction must, of course, be made between mere irregularities in compliance with the law and acts which fall entirely outside of the authorization of the law.

These decisions certainly warrant us in concluding that officers authorized to issue bonds have power to determine that the conditions of the law have been complied with; that the decision of such officers to that effect is binding upon the State; and that the recitals of the bonds duly signed by such officers that said conditions have been complied with, is the only evidence which the bondholder must produce in order to establish the validity of his bonds.

If the specific cases of repudiation on the grounds of illegality described in preceding pages be adjudged in accordance with the principles of the law here laid down, it will be found that some of them were legally justifiable, but that others were not. It is not essential to our present purpose to show which ones were thus justified and which were not: the fact just stated is sufficient. Something more is needed to establish the invalidity of a bond, even in the eyes of the law, than the fact that in its issue the precise

¹ Burroughs: "Law of Public Securities," p. 320 *sq.*

conditions of the law authorizing it have not been complied with. The rights of innocent and *bona fide* bondholders are not thus summarily to be disposed of. It is necessary for this purpose to establish that the law authorizing the bonds was unconstitutional, or that the alleged irregularity in their issue amounted to the setting aside of the law entirely, and then it is a question upon which the Supreme Court of the United States and our State courts do not agree — whether the recitals of the officers authorized to issue the bonds do not bind the State.

The question arises at this point whether it is expedient that the State should in all cases take advantage of her right, and repudiate whenever such a proceeding would be sanctioned by the courts. The answer to this question should depend upon the gravity of the case. It would be unwise to lay it down as a general principle that the State should adopt this course of procedure or the opposite *in all cases*. It is necessary to discriminate, and in each case to set over against each other the advantages and disadvantages of repudiation. While the presumption in the circumstances supposed may be in favor of repudiation, it is easy to adduce cases in which such a course would greatly injure the State, as well as do rank injustice to her creditors. The equities of the case and the interests of the State's credit should have great weight in doubtful cases.

In equity inquiry should always be made into the innocence or fraud of the creditor. In many cases in this country men have secured the bonds of the State through connivance and fraud, without parting with a dollar of their money. Cases of this sort should not, of course, be treated with leniency, and repudiation of the debt would be the proper course, unless greater injury than that involved in the fraud would thereby come to the State. On the other hand, it is beneath the dignity of the State and injurious to public morals to repudiate the bonds of an innocent holder who has parted with his money in good faith and possibly in part from patriotic motives. Only when the higher interests of the State clearly demand such a procedure should she take advantage of her legal rights under such circumstances.

A second point worthy of careful consideration in case the illegality of a debt has been established, pertains to the question whether or not the State has enjoyed the benefit of the borrowed money. In some of the cases referred to the repudiated bonds had been issued in aid of railroads and other public works, from which the State received no benefit whatever; in others the money obtained by the loan was used for the payment of the ordinary and regular expenses of the government. The question naturally arises whether the State is justified in refusing to pay back money which, though obtained by her officers without her consent, was

nevertheless accepted and used by her. In the case of an individual we would have no hesitation in answering this query in the negative. The fact that the principal received and expended the money which his agent borrowed in his name, even though without his consent, would, in the judgment of any civilized community, make the debt binding and legitimate. The case of a State is not strictly analogous to this, because the acceptance and expenditure of the money directly are impossibilities. Agents must act for her here as well as in the matter of borrowing, and collusion between these two sets of agents is possible, if there are two sets; and, of course, if the same persons both borrow and expend the money, further investigation would be needed in order to discover the obligation of the State. The case of the State, then, is really analogous to that of an individual whose agent borrowed money without his consent, and also expended it. To establish the obligation of the principal to pay the debt under such circumstances, it would be necessary to establish the fact that the agent acted in the expenditure with his consent. In like manner, if investigation develops the fact that money illegally borrowed was expended with the full and legally expressed consent of the people's representatives, it is difficult to escape the conclusion that the State is under moral obligations to pay the debt.

Aside from the equity of the case, a failure to

observe which will disgrace the State and inflict a blow upon public morality, the maintenance of the State's credit demands that she shall not repudiate her bonds except in the most extreme cases. It is probable that repudiation, even under such circumstances, would render it difficult to borrow again. The money-loaning public is extremely sensitive. It does not easily appreciate nice constitutional and legal points. Especially difficult is it to convince this public that the State which accepts and uses borrowed money, and then refuses to pay it back in due time, is not guilty of robbery. The fact that irregularities in the issue of the bonds have taken from the creditor all remedy in the courts, does not prevent him from making the determination that he will not again risk his money in such a manner. Even under circumstances the most favorable to the State, repudiation shakes the public faith in public securities.

Our own experience in this matter cannot be conclusive on the point under discussion, for most of the cases of repudiation recorded in the previous chapters cannot be legally justified; but it may, nevertheless, be interesting in this connection to note the fluctuations in State securities during a part of the decade of repudiation. The following table was compiled by Hon. Robert P. Porter, and was published in the *International Review* for 1880.

Fluctuations in State securities from 1872 to 1879, inclusive, with the average value for the same time : —

STATES.	1872	1873	1874	1875	1876	1877	1878	1879	Aver. age.
Maine . . .	100	100	100	100	100	100	100	100	100
New Hampshire,	100	100	100	100	100	100	100	100	100
Vermont . .	100	100	100	100	100	100	100	100	100
Massachusetts .	103	103	103	103	103	103	103	103	103
Rhode Island .	99	99	99	102	107	110	105	110	104
Connecticut . .	99	99	99	103	105	109	106	106	103
New York . .	104	105	106	109	110	113	115	114	110
Pennsylvania .	99	100	100	100	100	100	100	100	99
Maryland . .	102	102	102	102	102	102	102	102	102
Virginia . .	50	42	35	35	44	39	36	36	38
North Carolina,	21	29	21	30	19	24	24	33	25
South Carolina,	34	27	15	28	31	32	31	11	26
Georgia . .	73	87	68	81	98	101	104	107	90
Alabama . .	90	57	25	43	26	26	29	60	45
Louisiana . .	68	50	19	25	35	39	61	67	46
Texas . . .	88	73	83	95	101	101	101	101	93
Arkansas . .	50	30	19	12	15	11	8	7	19
Tennessee . .	65	79	69	38	44	42	35	33	53
Kentucky . .	96	96	98	100	101	101	101	101	99
Ohio . . .	100	101	100	102	107	106	104	106	103
Indiana . . .	100	102	100	99	100	100	100	100	100
Illinois . . .	99	95	95	99	101	100	102	103	99
Michigan . . .	98	97	94	102	105	104	104	107	101
Missouri . .	94	90	96	95	101	103	104	105	98
California . .	110	110	110	105	105	105	105	105	107

This table clearly shows the deadly influence of repudiation on State credit. It shows also that in this country, at least, the money-loaning public does not distinguish between cases of justifiable and unjustifiable repudiation, but has condemned all indiscriminately.

The inquiry upon which we entered in this

chapter has advanced but one step. The illegal character of bonds is but one of many causes of repudiation in this country. In some cases, as we have seen, illegality was simply alleged as a pretext to cover up the real condition of affairs. In all cases it was accompanied and re-enforced by other more or less potent causes. In our further inquiry we must go behind and below the phenomena, and look deeper into the public mind for the explanation which we seek. Four topics must be considered in this connection: The heavy pressure of debts on the repudiating States; the corruption of State officials; the financial crisis of 1837; and the Civil War.

No one can examine the facts presented in the previous chapters without being impressed with the magnitude of the debt of the repudiating States. At about the time of the appearance of the sentiment in favor of repudiation in these States, the debts which were imminent, including both those recognized and unrecognized, were somewhat near the following figures: In Arkansas, \$8,600,000, besides about \$5,000,000 of bonds issued to railroads; in Florida, \$4,850,000; in Georgia, \$11,135,500; in Louisiana, \$22,500,000; in Mississippi, \$7,000,000; in Virginia, \$45,000,000; in North Carolina, \$15,000,000; in South Carolina, \$15,850,000; in Alabama, \$11,345,000; in Tennessee, \$43,950,000.

If we reckon the average rate of interest paid at five per cent, which is below the correct figure, the annual interest charges represented by these debts

are about as follows : In Arkansas, \$433,000, besides about \$247,000 for which she was liable in case the railroads defaulted ; in Florida, \$242,000 ; in Georgia, \$556,000 ; in Louisiana, \$1,121,000 ; in Mississippi, \$350,000 ; in Virginia, \$2,250,000 ; in North Carolina, \$750,000 ; in South Carolina, \$792,000 ; in Alabama, \$567,000 ; in Tennessee, \$2,192,000.

The total amount raised by taxation in these States at about the time to which these figures refer indicate that such interest charges as these were really seriously burdensome. When Florida was threatened with an annual interest charge of about \$200,000, her total revenue was less than \$100,000 per annum. The interest on Virginia's debt in 1870 amounted to about \$2,000,000, while her income for 1869 did not reach \$3,000,000. An interest charge of \$700,000 and more hung over North Carolina when her taxes yielded only a little over \$500,000. The interest on Alabama's funded debt amounted to over \$500,000 at a time when her income from taxation amounted to only a little over \$800,000.

Such facts as these do not furnish an argument in favor of repudiation. The States could unquestionably have endured a much heavier weight of taxation, and the enormous increase in the wealth of the Southern States during the last decade shows that they were becoming year by year better able to bear heavy burdens of indebtedness. It would in every case have been possible

to arrange with bondholders for the payment of both principal and interest at some future time when the resources of the State should be greater. Any bondholder would have preferred such an arrangement to the repudiation of his bonds. Other expedients might have been devised. But while these facts do not furnish an argument in favor of repudiation, they certainly help to explain the fact. It is not surprising that tax-payers sought ways and means of avoiding such burdens, and that they grasped at every straw which offered them hope.

It is still easier to understand the sentiment in favor of repudiation when we remember that in most cases the debts which gave the greatest weight to this burden were rolled upon the shoulders of the States by defaulting and bankrupt railroad or banking corporations whose enterprises the State had attempted to advance by indorsing their bonds or by issuing bonds to them directly. The people felt that these debts were not their own; that they were about to be heavily taxed in order to foot the bills of speculators who had very likely emerged from a cloud of bankruptcy with well-lined pockets. The matter was made still worse by the fact that in most cases the property mortgaged to the State for security was of little value when the mortgage was foreclosed. Georgia secured some railroad property, the utilization of which plunged her still more deeply into debt.

Tennessee had the same experience. In many cases the roads mortgaged defaulted before their completion, and the State obtained by foreclosure only a few miles of graded track which could be sold simply for railroad purposes, and that at a great sacrifice, and which the State was in no condition to utilize for herself. When the enterprises aided were banks, as in the cases of Mississippi, Florida, and Tennessee in part, the matter was still worse, for usually the State had invested heavily in bank stock, which became worthless when the banks failed. It is exceedingly hard for a man to pay a note which he has indorsed for the accommodation of a friend. Unquestionably many such debts would be repudiated if their payment could not be enforced by the courts. It is very much harder to pay heavy taxes on account of the failure of corporations in which one has no direct interest. The former sacrifice is compensated in part by the gratitude of the friend, and the hope that he may pay back the sum in the future; but for the latter there is no compensation of a positive nature. Public honor, or the desire to save the State from the disgrace of breaking her plighted faith, are the only motives to the payment of such a debt.

A second source from which we may draw for a partial explanation of the repudiation sentiment in some of our States is the belief in the extravagance and corruption of the State governments. That this belief was often well founded is attested

by an abundance of facts in the case of at least two States.

While the greater part of the debt of South Carolina was being contracted, the legislature of that State was in the hands of a horde of ignorant men who cared only for their own gains. The report of the Joint Investigating Committee on the public frauds of South Carolina contains in the space of about nine hundred pages a record of fraud and extravagance which is unequalled in the annals of this country, and hardly surpassed in those of any other. Speaking of the extravagance of the legislatures of this period as compared with the economy of those of previous periods, a writer in the *International Review*¹ uses the following language: "The old legislature had been contented with five-dollar clocks; the new one purchased six-hundred-dollar clocks. Forty-cent spittoons gave way to eight-dollar cuspids; four-dollar benches were abolished to give place to two-hundred-dollar crimson plush sofas. The legislator who was content to serve his State upon a dollar chair, in the new era leisurely lounged upon sixty-dollar plush Gothic chairs; eighty dollar library desks took the place of four-dollar pine tables; and twenty-five-cent hat pegs were abolished to give place to thirty-dollar hat-racks; ten-dollar office desks were abandoned, and others costing one hundred and seventy-five dollars substituted; coats that formerly hung

¹ Hon. R. P. Porter in November number, 1880.

upon fifty-cent coat-hooks were, under the new dispensation, carefully put away in one-hundred-dollar wardrobes ; cheap matting was taken up and body Brussels substituted ; the finest Havana cigars took the place of clay pipes, champagne of whiskey, six-hundred-dollar mirrors of four-dollar looking-glasses, while six-hundred-dollar brocadel curtains and lambrequins adorned the windows from which formerly hung two-dollar curtains.”¹

During this carnival of extravagance enormous debts were contracted, the amount of which could not be accurately estimated on account of the confusion of the public records. Legislative committees unearthed the most gigantic frauds, and completely destroyed the confidence of the people in the validity of the greater part of the State debt.

The investigations made by legislative committees of the State of Georgia revealed a most suspicious mass of facts concerning the official acts of those concerned in the negotiation of many of her bonds. One of her governors practically confessed his complicity in bond swindling schemes by resigning his office and fleeing the country. Other officials were suspected of the same crime, though direct and absolute proof was not obtained. Whatever the facts may have been, it is unquestioned that the impression went forth among the people of the State that they had been fearfully swindled by those to whom they had intrusted the reins of

¹ For further facts, see Appendix VI.

government. Fraud was also charged against the State governments of Alabama, Tennessee, and Louisiana.

It is not necessary for our purpose to show that these charges were true. It is sufficient to indicate the fact that the impression that they were true, or the fear that they might be true, was prevalent among the people, and was intensified in their representatives. That such an impression tended to create a sentiment in favor of repudiation, there can be little doubt. Overburdened tax-payers, even though their respect for public morality may be very high, will not fail to give themselves the benefit of any doubts concerning the justice of the burdens they are called upon to bear.

No analysis of the causes of repudiation in this country can approximate completeness which does not include the characteristics of the two periods of our history in which these events occurred. A reference to the dates of the passage of the repudiation acts which have been described, will show the limits of these periods. To the first belong Florida and Mississippi. The former State adopted the constitution which committed her to repudiation in 1845, and the message of the Governor of the latter State, in which repudiation was first suggested, was given to the public in January, 1841. Most of the other States passed their repudiation acts in the decade between 1870 and 1880.

In the early forties, the first period to be considered, the people of our country were in the midst of the gloom and despair which succeeded the terrible financial crisis of 1837 and 1838, and which brought financial ruin to thousands. To appreciate the state of the public mind at this time, it is necessary to recall the circumstances which led to that crisis.

The seven years preceding were declared by a prominent judge of that period,¹ to be "one of the most extraordinary financial periods — perhaps the most extraordinary one — which the world has ever seen." Ever since the close of the War of 1812, and the Napoleonic wars in Europe, our country had experienced unparalleled prosperity. Our population had increased from seven to seventeen millions. Manufactures had been successfully started, and were producing a quantity of some commodities sufficient not only to supply our own wants, but also to supply the material for a respectable export trade. Our commerce had been enormously increased as a result of this and such other causes as a vast increase in the *per capita* production of agricultural products, the opening up of our mineral resources, the establishment of peaceful relations with England and France, and the natural development of American enterprise. New territories of vast extent had been opened to enterprise and speculation by an

¹ Judge Curtis in *North American Review* for January, 1844.

enormous extension and improvement of the means of communication, notably by the building of canals and railroads. Cities had grown up in an incredibly short time, in the midst of wildernesses. In fact, everything in the line of material prosperity seemed to be within our grasp, and we became a wonder to ourselves and to the rest of the world.

The writer just referred to eloquently described our attainments during this period in the following words : "The stories of the old poets concerning heroes who built cities by the shore of the sea, and, by their mighty energies and the direct assistance of the divine power, created states that were secured by laws, supplied by industry, and adorned with the arts of life, do not sound incredible or strange in our ears. In the lifetime of one generation we have seen an extent of wilderness that seemed illimitable divided into cultivated farms ; solitary inland seas made glad with the presence of an active and prosperous commerce ; great rivers, whose waters formerly reflected only the shadows of the forest, running by the luxurious abodes of civilized men, and bearing the varied products of labor ; cities which are already worthy of the name, filled with an industrious and intelligent population, springing up in the solitary places ; nay, great States, whose people are reckoned by millions, brought into existence and established during this short period."

The remarkable financial era of which Judge

Curtis spoke was produced in part by this great material progress, and in part by a combination of circumstances which, if not entirely fortuitous, was at least very unusual. The use of bills of exchange became general during this period, which vastly increased our facilities for foreign commerce, and was equivalent to a large addition to our commercial capital. While this change in the methods of exchange was in progress, the war against the United States Bank was being carried on. As a result of this, deposits were transferred to State banks, and local banks were multiplied all over the Union. The nominal capital of banks of this class was increased from one hundred and ten to two hundred and twenty millions between the years 1830 and 1837. The country was flooded with the notes of these banks, which, together with the practical increase in our circulating medium, caused by the rapid development of the credit system, produced inflation and an unnatural rise of prices which exaggerated the substantial progress which the country was experiencing. In addition to all this the States, in 1836, received subsidies from the treasury of the United States, in the form of shares of the surplus revenue, which was then being distributed.

Under the influence of all this stimulus both States and individuals became intoxicated, and contracted obligations in the most reckless fashion. The former embarked in gigantic enterprises in

the form of public works, to pay for which millions of dollars of bonds were issued. These sold readily at good prices in the markets of Europe. Financiers the world over had unbounded confidence in our good faith, for we had just (in 1836) performed the unusual feat of paying off a national debt; and the same circumstances which gave us confidence in ourselves dispelled any doubts which might at one time have entered their minds concerning our ability to pay almost any amount of debts.

The influx of the millions of foreign capital which represented the proceeds of these bonds, added to the stimulus produced by the inflated bank issues, the government subsidies, and the real industrial progress of the nation, and the result was an epidemic of reckless speculation which spread throughout the business world, and did not exempt from its influence the humblest classes. In the words again of Judge Curtis, "Some who, in former times, would have found occupation suited to their daring tempers in the field, embarked their recklessness in commerce; others, whose rashness under ordinary circumstances would have been soon checked by disaster, or prevented from showing itself by want of means, found that their energy and love of adventure had made them leaders; and others still, whose fears would have been roused by danger, lost all hesitation in the general confidence. Men acted as if a

short and secure road to wealth had been discovered on which all might travel, and he who went fastest would be the first to reach the desired end. The result was such a morbid tendency to excess in all financial affairs as had never before been witnessed. . . . All uses of capital seemed to be followed by certain and large returns, and men were, therefore, eager to borrow. All pursuits appeared to be safe and prosperous, and, therefore, those who had money were desirous to lend it. So much security was felt that little was asked; and to obtain money nothing more was necessary than to show the lender that it was to be employed in some magnificent scheme which stood well with the large expectations of the time, and was in season with the glorious summer of men's hopes."

Such was the state of the public mind on the eve of the great financial crisis of 1837. Only a few of the most conservative and far-sighted saw that these great hopes and expectations and this unparalleled prosperity were based upon a greatly inflated currency and a superstructure of credit which could not long sustain the weight which was resting upon it. The first intimation of the true state of affairs came from London, when the Bank of England stopped the credit of several American banking houses. This act was rendered necessary by the flow of specie which endangered the bank itself.

At this very time, notwithstanding the inflation of our currency and the constant influx of foreign capital, the demand for money in this country exceeded the supply, and this cutting off of the means of foreign exchange through instruments of credit, together with Jackson's specie circular, made a demand for specie which could not possibly be supplied. At once there was a general call for the payment of obligations, and the banks were besieged for the coin which they did not possess and could not obtain. Temporary expedients, such as the issue of something over a million sterling bonds by the Bank of the United States of Pennsylvania, were of little avail, and the inevitable suspension of specie payments came. With it came a general suspension of business.

For several months the people devoted themselves to the payment of their debts whenever this was possible, and to the settlement of their affairs according to the laws of bankruptcy whenever this was not possible. There was a general redistribution of the wealth of the country. Thousands of persons lost the whole or a large part of their property, and, what was equally as bad, no money could be gotten at any price in order to make a fresh start. Even wealthy persons found it difficult to get the money needed for ordinary expenses, and in many States the average farmer and laborer could get no currency at all. "Failures were almost innumerable. Trade had fallen

off, and when prosecuted was hazardous. A deep gloom settled upon men's minds. . . . The people were amazed at their own disasters, and afraid to act in any way lest they should run into new mistakes." The bubble of prosperity had burst, and men's eyes were at last opened to the true state of affairs.

Many of the States were no better off than individuals. (Pennsylvania, Maryland, Michigan, Mississippi, Illinois, and Indiana defaulted in their interest payments. The period of debt contracting had suddenly come to an end. No more money could be borrowed, even to meet the comparatively small amount required for these interest payments. The only resort was to increased taxation, and that on a much diminished taxable basis. The feelings of tax-payers may be imagined. These debts had been contracted for public works which the people had expected to be productive of great wealth. It had not for a moment been imagined that they could be the occasion of an increase in the tax levy; "and when, the means of the State exhausted, it was discovered that the moneys borrowed must be paid out of ordinary revenue, the public was filled with consternation.") It is scarcely surprising that at such a time creditor should have been synonomous with enemy, and that a public creditor, — especially when the claim which he held was believed to be tainted with fraud, as in the case of the bonds which had been

issued to the banks, and were a partial cause of their disasters,—should not have been given a fair hearing. Sound reasoning and the triumph of the highest moral principles will be sought in vain in the average man under such circumstances.

It is, of course, greatly to be regretted that Mississippi and Florida did not follow the good example set them by the other States which were suffering from the same malady. They issued due bills or interest certificates for the sum which they found themselves unable to pay, and in one way and another passed through the ordeal with honor and credit intact. The renewed prosperity of succeeding years enabled them to repair the damages of this period, and to meet with ease all their obligations. Mississippi and Florida might have done likewise had not the cry of illegality been raised against their bonds. The people of these States were unable, under the circumstances, to resist the temptation to repudiation which this pretext furnished them, especially after the question had gotten into politics and the fate of party measures had been staked upon it. What Mississippi might have done under other circumstances it is useless to inquire, but that the state of mind of her citizens induced by their disasters was a more potent cause of repudiation than the alleged illegality of her bonds, no one who studies the subject at this distance of time and in the light of historical facts can doubt.

Turning now to the second group of States, whose acts of repudiation, as we have seen, were passed for the most part in the decade between 1870 and 1880, we note that all, with the single exception of Minnesota, were seceders from the Union in 1861. This fact at once suggests the question whether there is not a relation of cause and effect between the disasters which these States suffered during the Civil War and the period of reconstruction and their acts of repudiation. The answer to this question will appear in a consideration of the effect upon these States which may be fairly attributed to the events of this unfortunate period in our history.

1. First of all we note that the civil war greatly reduced the taxable basis of these States. This is made evident by the following table, which shows the total assessed valuation of property for taxation purposes in the States enumerated for the years 1860 and 1870.¹

¹ These figures include the assessments both of real estate and personal property, and so the difference between the figures for 1860 and 1870 may be partially explained by the emancipation of the slaves, who in 1870 no longer appeared in the item of personal property, but who, nevertheless, should not be left out of any estimate of the tax-paying power of the Southern States. The inflation of the currency in 1870 offsets this error partially. The assessment of real estate — which was not affected by the disappearance of slaves from the category of property — shows a decrease, not so great as that indicated in the table, but one which was, nevertheless, enormous.

	1860.	1870.	Per cent of decrease.
Virginia	\$657,021,336	\$505,978,190	23
North Carolina	292,297,602	130,378,190	55.4
South Carolina	489,319,128	183,913,327	62.4
Georgia	618,232,387	227,219,519	63.2
Florida	68,929,685	32,480,843	52.9
Alabama	432,198,762	155,582,595	64
Mississippi	509,472,912	177,278,890	65.5
Louisiana	435,787,265	253,371,890	41.9
Arkansas	180,211,330	94,528,843	47.5
Tennessee	382,495,200	253,782,161	33.7

2. The debts of these States were increased enormously during this period, as is evident from the following table:¹ —

	1860.	1870.	Highest point reached by the debt.
Virginia	\$31,779,062	\$47,390,830	\$47,390,830
North Carolina	9,690,000	29,900,045	29,900,045
South Carolina	4,046,540	7,665,909	24,782,906
Georgia	2,670,750	6,544,500	20,197,500
Florida	4,120,000	1,288,097	5,512,268
Alabama	6,700,000	8,478,018	31,052,000
Mississippi	None	1,796,230	3,226,847
Louisiana	4,561,109	25,021,743	40,416,734
Arkansas	3,092,623	3,459,557	18,287,273
Tennessee	20,898,606	38,539,802	41,863,406

These increased debts are not all, of course, to be attributed either directly or indirectly to the Civil War, but a very large proportion of the increase is thus attributable. A considerable portion of it represents interest which accrued during the years of the war, the States being utterly unable to pay during that period. This item of increase

¹ Taken from R. P. Porter's article in *International Review* for November, 1880.

was very great in States like Virginia and Tennessee, whose ante-war debt was large. Another large item of increase is attributable to the period of reconstruction and of carpet-bag rule. A part of this represents expenditures which were necessary in order to put the wheels of State governments again into operation, but another and a larger part represents the extravagance of the carpet-bag *régime*. Both of these items are referable directly or indirectly to the Civil War. Other debts were contracted during this period in aid of genuine public works, and, having no connection with that struggle, should not be considered here.

3. The Civil War destroyed the idea of State sovereignty, which the South had cherished in ante-war times, and, as a natural and logical result of this, weakened the feeling of State responsibility. Especially did the States believe themselves devoid of responsibility for the increase of debts due to the interest which accumulated during the war and to the extravagance of the carpet-bag *régime*. Virginia's debt controversy concerned this very point. The Riddleberger bill, which for a long time constituted the ultimatum of a large party in that State, was based upon a calculation of the indebtedness of the State which left out of account the interest which accumulated during the war and the interest on that sum since the war days. Repeatedly have

the Southern States disclaimed responsibility for certain of the debts contracted during the period of reconstruction. The military governments, and many of those elected during the carpet-bag *régime*, were quite generally regarded as usurpations maintained by the force of the federal government, and for whose acts the true body politic of the State itself was not responsible.

(4. The fourteenth amendment to the constitution forced these States to repudiate the debts which had been contracted in the interests of the rebellion.) Viewed from the standpoint of the States' honor, it was not easy for loyal Southerners to distinguish between these and their other public debts. It was, on the whole, easier for them to repudiate the latter than the former, since some of them were owed to Northern capitalists, and the desire to avenge themselves upon the North for the disasters they had suffered was strong.

When all these circumstances are considered in connection with the fact that the war of secession was regarded in the South as a righteous struggle, brought on that section through no fault of its own, it is not surprising that we find the Southern people in a state of mind easily susceptible to arguments favoring repudiation.

In this review of the causes of repudiation no account has been taken of fundamental differences of character between the Northern and Southern

people. It has been alleged in the course of these debt controversies that the Southern character was unreliable in the matter of debt payment. The fact that only Southern States repudiated during that period of financial embarrassment which succeeded the crisis of 1837 might be regarded as proof of this unreliability. Pennsylvania, Indiana, and Illinois were in as great financial straits as Mississippi, but they paid their debts in full, while Mississippi repudiated a portion of hers. In Maryland, on the border line between the North and South, a party arose which favored repudiation, but it was unable to carry a majority of the people or of the legislature with it. In speaking of Mississippi, Judge Curtis in the article already several times referred to said :

"An intelligent foreigner, who feels a just indignation when he hears of repudiation, probably knows the difference between a Highland chieftain and a London merchant, but is profoundly ignorant that differences quite as great exist between the people of Mississippi and the people of Massachusetts. Probably there are few points in which these differences would be so likely to be exhibited as upon the matter of paying debts. To pay debts punctually is *the* point of honor among all commercial peoples. But the planters of Mississippi do not so esteem it. They do not feel the importance of an exact conformity to contracts. It has not been their habit to meet

their engagements on the very day if not quite convenient. Certainly they attach no idea of dishonesty to such a course of dealing. They mean to pay, but they did not expect when they contracted the debt to distress themselves about the payment. If a friend wants a thousand dollars for a loan or a gift, he can have it, though perhaps a creditor wants it also. We do not mean to intimate that there are no high qualities in such a character, but they are different from those which make good bankers and merchants; and, therefore, bankers and merchants ought not to expect such men to look at a debt just as they do."

This statement was written in 1844, and probably expresses what was true at that time. Very likely the Southern method of looking at debts and the obligation to pay them was different from the Northern, owing to the differences between the industrial characteristics of the two sections. This fact should be taken into consideration in accounting for the repudiation acts belonging to the first period described above. It should not be given equal weight, however, in the period after the war. That the industrial character of the South had then changed to a considerable extent is evinced by the character of the public works to the construction of which the States lent their financial aid. The desire to build railroads and canals on a large scale indicates the presence of the commercial spirit which, according to Judge

Curtis, characterized the North in 1844. Ever since the close of the great civil struggle the North and South have been growing alike in occupations, spirit, and character; and though the new South was only in its early infancy in the seventies, the commercial spirit which characterizes it had begun to exert its influence. Whatever effect it may have had, however, was more than neutralized by the influences which have been described as growing out of the Civil War. Up at least to the close of the period of reconstruction, these were all powerful in shaping the thoughts and motives of the Southern people.

The various forces which have been reviewed, and which all must admit have been potent causes of repudiation, should not be overlooked in any historical estimate of the moral character of the actions of the repudiating States, or of the honesty and integrity of the people who compose them. Many of them were certainly temporary and adventitious. It is highly probable that the combinations of circumstances which have been described as characteristic of the forties and the seventies will not occur again in our history. We should, therefore, be slow to conclude from past experience that our Southern States are not to be relied upon for the payment of their debts, nor should we go to the other extreme and, placing implicit confidence in our people's integrity, con-

clude that no safeguards against repudiation are needed. It is the purpose of our concluding chapter to show that such safeguards are desirable, and to suggest those which seem best adapted to our conditions.

VIII.

REMEDIES FOR REPUDIATION.



CHAPTER VIII.

REMEDIES FOR REPUDIATION.

IN view of what has been said in the pages immediately preceding, this chapter may be thought unnecessary. It was there shown that the failure of our Southern States to pay their debts was to be explained, in part at least, by the unusual state of the public mind, induced in the forties by the consequences of the crisis of 1837, and in the seventies by the Civil War and the events which followed it. Surely these were unusual events, and their like may never occur again; indeed, is not likely to occur again. As causes of repudiation, they are certainly no longer operative, and no legislation to counteract them is necessary.

This view is also supported by the fact that the power of our States to contract debts has been so much restricted in recent years that the accumulation of a heavy load of indebtedness is an impossibility. New Hampshire, Vermont, Massachusetts, Connecticut, and Delaware alone give their legislatures freedom to contract any debts they may see fit. Many of the other States limit the amount of

debt that may be contracted to a very small sum ; for example, Maryland, Michigan, and Oregon, to \$50,000 ; Alabama, Wisconsin, and Nebraska, to \$100,000 ; others, to \$200,000, \$250,000, \$300,000 \$500,000, \$750,000, and the most liberal, New York, Pennsylvania, and Kansas, to \$1,000,000.

Other States limit the amount of indebtedness possible by prescribing that it shall not exceed a certain percentage of the taxable valuation. Colorado, for example, does not permit her total indebtedness to exceed three-fourths of a mill of the taxable valuation. Indiana, Virginia, and West Virginia now limit the power of borrowing money to "casual deficits." The majority of our State constitutions forbid the lending of the State's credit to corporations, and forbid the purchase by the State of the stock of corporations. Other States — Wisconsin, Michigan, Minnesota, and Kansas — are prohibited from contracting any debt for internal improvements.

It is evident that so long as these restrictions remain we need not expect to see our States contracting debts worth mentioning, and of course no remedy for repudiation could be quite so effective as that which practically prohibits State debts. It must be admitted, therefore, that the present policy of restricting the power of legislatures to borrow money, practised in nearly all our States, renders the adoption of any remedy for repudiation unnecessary.

But is this policy to be commended? Is it desirable that our States should voluntarily relinquish their power to borrow money? The answer to this question must be sought in their prospective need for more funds than can be raised by taxation in the course of a few years. What are the prospects along this line? Are there any good reasons for believing that our States will find it desirable to make extensive use of their credit in the future? There are not wanting signs of the times which render such a desire highly probable. Among these may be noted the following:—

1. The need for the cultivation of extensive tracts of forests in this country is acknowledged by all who have any familiarity with the subject. It is also a well-known fact that this need can only be met by the extensive application of scientific forestry through the agency of government. It has been repeatedly demonstrated that private individuals do not find it profitable to engage in this industry, but that for the public it is not only profitable in a pecuniary sense, but demanded by public interests which cannot be neglected without serious injury to the public welfare. To inaugurate a system of scientific forestry on the scale demanded by the needs of the time would entail large expenditures which could only be met by the use of the public credit. The question remains whether the States or the United States should undertake this work. Unquestionably both of them, but the

States should do the greater part of it. Most of the territory which should be covered with forests lies within the borders of States, and the federal government could hardly be expected to plant trees upon lands which it does not own. Moreover, the States are better fitted for this work than the federal government, owing to the fact that they are closer to the people and to the fact that, on account of the limited extent of their territory, they would be able to devote study to a single set of conditions, and thus be more liable to secure the form of forest culture best suited to their interests.

2. The need of irrigation is most pressing in some of our Western States. In the Dakotas and in Kansas it may be said without exaggeration that the industry of agriculture, which supports the very life of the State, is doomed to less than mediocre success, perhaps to utter failure, unless extensive systems of irrigation are made to supply the moisture which nature denies them. Before the people of these and other Western States three alternatives are open. They must either submit to crop failures four years out of five, or grant the privilege of supplying them with water to corporations which would thus acquire over them the power almost of life and death; or they must undertake the work of irrigating their farms through the agency of their State governments. There can be no doubt concerning the best course for them to pursue. A matter which so vitally

concerns them could, with safety, be intrusted to a State legislature, for fraud and misgovernment cannot permanently conceal themselves when they directly affect the pockets of the people. The construction of irrigation works would occasion in the beginning a large outlay, which might in time be repaid with interest from the profits of the works, but which could be supplied when wanted only by borrowing on the credit of the States.

3. State ownership of natural monopolies is advocated by an increasing number of persons each year, and it is certainly not unreasonable to expect that States will desire to control at least some of the worst forms of monopoly in the not distant future. But this cannot be done so long as they are unable to command large sums of money through the agency of loans. It is quite impossible for governments to enter upon any industrial undertaking without the exercise of their borrowing powers. The heaviest taxation which the people would endure would not suffice, and the imposing upon them of such a burden, even if it would suffice, would be a greater evil than the one sought to be remedied.

4. A fourth occasion for the use of State credit may be found in the need of the people for institutions of higher education. It has always been the policy of our States to supply the rudiments of an education to our people free of cost in the common schools; and it is now quite generally felt that

each State should endow at least one institution where her young people can secure a liberal education and instruction in those special branches a knowledge of which is essential to good citizenship, or to an adequate preparation for the higher industrial activities of the present day. Our Western States have already entered upon this work by the establishment of State universities, but some of them are seriously handicapped by their inability to secure the funds needed for the proper equipment of these institutions. Their annual support can be provided for by current taxation, but loans are needed to construct buildings, to supply libraries, and to furnish costly apparatus. The demand for loans for these purposes may be expected to increase in the future.

These and other considerations which might be adduced justify us in questioning the wisdom of the policy of unduly restricting the borrowing power of States. Too much care, of course, cannot be taken to prevent hasty legislation or extravagance. Restrictions upon legislators, the aim of which is to compel very careful consideration by all parties concerned of every bill which authorizes a loan, cannot be too highly commended; but the same commendation cannot be given to restrictions which make the extensive use of State credit an impossibility, no matter how great the emergency may be.

The only object of such restrictions is the protection of the people against their own representa-

tives. Such protection is necessary and desirable; but in the matter of contracting debts it can best be secured by the use of the referendum. If every bill authorizing a loan for a special object be submitted to the people for confirmation or rejection, they cannot be imposed upon or burdened against their will, and necessary appropriations for public improvements will not have to await the slow and doubtful processes of constitutional amendment. This plan avoids those frequent appeals to the people for changes in their fundamental law which are never productive of good results.

The inevitable outcome of our present policy is the decadence of the States as centres of administration, and the absorption of the most important functions of government by Congress and the local political units. Such a result is to be deprecated as a menace to our federal system, and as an unnecessary strain upon our Republican institutions.¹

Whenever our States shall again have occasion to borrow on a large scale, the desirability of remedies for repudiation will become apparent. The remembrance of the acts of repudiation which have been described will not be effaced by the lapse of a few years; and our States will be compelled to grant to their creditors the power to force

¹ See Professor Henry C. Adams's able presentation of the need of preserving intact the borrowing power of States in his "Public Debts," Part III., chap. iv.

them to pay their just debts — so far, at least, as their ability will permit — before the capital of the moneyed classes will be placed at their disposal.

Among the various remedies for repudiation which have been proposed, two should hardly be taken seriously, since they were doubtless suggested by other motives than a desire to secure the best solution of the problem. The suggestion made in the public press at one time that States guilty of repudiation be deprived of their representation in Congress belongs to this category. In the first place, this remedy could not be applied unless an entire change be made in our fundamental law and in the nature of our central government. In the second place, it might not remedy the evil if it were applied. Unless other measures giving the federal government entire control of the machinery of the State for taxation purposes should accompany it, it would not secure the payment of the repudiated debt in the future.

The second remedy referred to was suggested by John Quincy Adams, in 1843, in the following resolutions which he proposed as a substitute for those presented by a committee of the House of Representatives of which he was a member, and to which had been referred a plan for the assumption of the State debts : —

1. *Resolved*, That the repudiation by any State of this Union of any debt to foreigners, contracted by authority of the

legislature of said State, is a violation of the Constitution of the United States, in the first paragraph of the tenth section of the first article, which provides that no State shall pass any law impairing the obligation of contracts.

Resolved, That if any State of this Union, by or in consequence of such repudiation, involve herself in war with any foreign power, the Congress of the United States has no power to involve them or any other of the States of this Union, or the people thereof, in such war.

Resolved, That, in the event of such a war, the State involving herself therein will cease thereby to be a State of this Union, and will have no right to aid in her defence from the United States, or any one of them.

These resolutions disclose an anomaly in our public law which deserves careful attention in this connection. Our Constitution places the power of peace and war with the federal government, and also imposes upon it the duty of protecting the States of the Union in case of foreign invasion. At the same time it leaves States free to contract debts either at home or abroad, and free to repudiate them if they so desire. In this freedom is involved the possibility of a foreign war. The law of nations clearly recognizes the right of a State to forcibly seize upon the property of another State, or to make war against her, simply for the purpose of enforcing the payment of an unsatisfied debt held by herself or any of her citizens. Vattel states the law in the following words: "If one nation . . . refuse to pay a debt, repair an injury, or give satisfaction to another, the latter nation may seize something belonging to the former

and apply it to her own advantage, till she obtains payment of what is due her, together with interest and damages.”¹ Another authority says: “Fundamentally . . . there is no difference in principle between wrongs inflicted by breach of a monetary agreement and other wrongs for which the State, as itself the wrong-doer, is immediately responsible. The difference which is made in practice is in no sense obligatory; and it is open to governments to consider each case by itself and to act as seems well to them on its merits.”²

The resolutions of John Quincy Adams were very likely intended to bring up for discussion and remedy in Congress the anomaly in our public law which has been noticed.³ As a remedy for repudiation they are open to the serious objection of substituting the greater for the lesser evil. It would unquestionably be better for us as a nation to undertake the settlement of a case of a repudiating State, even though that might involve the use of our army and navy, than to lose her from the Union. We have thought it worth while to fight a bloody and costly war in order to preserve our Union intact, and no one would be so silly as to propose that we permit it to fall apart on account of a slight defect in our constitutional law.

The scheme which carried with it most weight,

¹ “Law of Nations,” Book II., Sec. 342.

² William E. Hall’s “International Law,” p. 237.

³ See Adams’s “Public Debts,” pp. 25-27.

and which received the adherence of the largest number of persons in the early part of our history, was that which proposed the assumption by the federal government of the debts of the States. This scheme was not calculated simply to prevent repudiation or to remedy the evil after it had occurred. It was designed as a measure of relief for all the States which had burdened themselves with debts, and was advocated on the grounds of justice as well as expediency. It was formulated and brought before Congress by William Cost Johnson, of Maryland, in the form of a report of a select committee made in March, 1843. The arguments advanced in support of it were based upon the fact that the greater part of the then State debts had been contracted in aid of public works, and upon the claim that these public works were "calculated to strengthen the bonds of union, multiply the avenues of commerce, and augment the defences from foreign aggression." On these grounds it was claimed that it was just and proper for the federal government to assume these debts. It was further suggested that such a course of action would relieve the citizens of these States from a heavy load of taxation, and remove all danger of repudiation.

Many objections to this plan were urged, and these proved strong enough to prevent its adoption by Congress. The most important of these were the following: (1) The assumption of the State

debts would bring no benefit to the non-indebted States. It would rather injure them by making them bear a portion of the debt of their sisters. (2) States intrusted with federal bonds for this purpose might apply them to other uses. (3) If the States were relieved of their present difficulties, they would speedily become indebted again. (4) Assumption of State debts would embarrass the federal government.

The advocates of this plan met the first objection by proposing a distribution of the stock to be issued by the federal government among all the States,—those having small or no debts as well as those heavily burdened,—in proportion to their representation in Congress. A table¹ was drawn up showing how much each State would receive according to this plan, but it was not successful in winning the votes of the States which were comparatively free from debt. To overcome the second objection it was proposed that bonds should not be issued to the States directly, but to bond-holders in exchange for their State bonds. The fear that the States, once relieved from debt, might at once proceed to burden themselves again, and be encouraged in so doing by the belief that the federal government would again shoulder their burdens, was thought to be groundless in view of the fact that the States least indebted at that time were the most heavily burdened in 1791, when

¹ See Tenth Census, vol. vii. p. 528.

Hamilton's policy of assumption was put into execution. It was also believed that the federal government could easily relieve itself of the debt thus assumed by levying heavier duties on imported goods.

The third objection was unquestionably a weighty one, and one not to be dismissed by mere reference to the effects of Hamilton's assumption act. To establish the policy of federal assumption of State debts would undoubtedly encourage recklessness and extravagance in the States. Indeed, it would be equivalent to giving a State legislature the power to appropriate for its use moneys out of the federal treasury. Such a policy would be contrary to that fundamental principle of Republican government which places the power to appropriate money and the responsibility for its expenditure in the same hands.

Whatever may be said, however, in opposition to this plan, it remains the only one feasible under the present conditions of our public law. It would be much better for the federal government to assume the debts of States than to accept other possible alternatives such as the allowing her credit to be seriously impaired by their defalcations and repudiations, or the defending of them by force of arms in case of a foreign invasion.

A fourth remedy for repudiation was suggested in 1883 by Mr. Moore of Tennessee. He introduced a bill into Congress which provided for the

repeal of the eleventh amendment to the Constitution, and for the granting to Congress of power "to provide by appropriate legislation for the legal enforcement of contracts entered into by any of the States of the Union." Mr. Moore's bill attracted very little attention in Congress and never became a law, but it is worthy of serious consideration in this connection. The repeal of the eleventh amendment would restore that article of the Constitution which provides that States may be sued by individuals in the United States courts. Creditors could certainly ask for no better regulation than this for securing a judgment concerning the legality of their bonds. But, having secured a favorable judgment, how could they enforce the payment of the debts due them? Mr. Moore proposed to leave to Congress the solution of this difficult problem, and consequently his bill throws no light upon it. He thus left the most important part of his remedy to be conjectured. It is necessary to our discussion that we inquire how States may be forced to pay their just debts.

In searching for an answer to this question we shall find it profitable again to examine our method of dealing with cities or other local political units which repudiate their debts. The practice of our States in this matter is not uniform, but it is capable of being explained by two general principles. Massachusetts and the other New England States hold that "judgments against a quasi corporation

may be satisfied out of the property of any individual inhabitant.”¹ In other words, these States satisfy the just claims of bondholders by attaching and selling the property of individuals who are citizens of the “quasi corporation” which has repudiated its bonds.

Other States resort to compulsory taxation. Instead of holding individual citizens responsible, these States hold the corporation itself responsible, and compel its officers by writ of *mandamus* to collect the taxes necessary to the satisfaction of the debt. This procedure may be defended, says Professor Henry C. Adams,² on the ground “that when a political corporation has contracted a debt or incurred an obligation, it has already taken the initiatory step in taxation, and has in effect given its consent that the subsequent steps, so far as they may be essential to the discharge of such a debt or obligation, may be taken.”

Both of these methods are feasible and efficient when employed against cities and other subordinate political units, but would they work equally well against repudiating States?

It must be admitted that such methods of procedure would be entirely without precedent, if we except the military governments established in the seceding States at the close of the Civil War; that they would strike a blow at the legislative inde-

¹ Adams’s “Public Debts,” p. 297.

² *Ibid.*, p. 297.

pendence of States; and that they would weaken what remains of State sovereignty. But do these facts constitute valid objections to the remedy which they propose? Is that feature of legislative independence which makes it possible for a State to repudiate her debts—and that is the only feature touched by this remedy—desirable? Would not the States be the gainers by the relinquishment of this shadow of sovereignty for the substance of a good credit? Our States have been foolishly sensitive to infringements upon their so-called dignity. They have regarded it as a humiliation unworthy of them to be forced to appear as defendants in a court of justice. A sovereign State, it has been said, would not disgrace herself by refusing to do justice to all with whom she has dealings. But in the face of the fact that they have repeatedly done injustice to bondholders, and that too without good reason, of what advantage is this assumption of dignity! Other States, Prussia, for example, voluntarily submit themselves to such indignities, even in matters of far less moment than those which we are considering.

It is difficult to see wherein the States would suffer injury by the application to them of the remedy in question. Of course the mere fact that the payment of bonds adjudged valid could be enforced would remove all necessity for such enforcement, for no State would war against the inevitable by refusing to provide under such circumstances for

the payment of her bonds. Hence the disgrace of being forced to pay debts needs never to be incurred.

Two positive advantages would follow the adoption of this remedy. State bonds would find ready sale in the markets of the world at low rates of interest, for the two essential elements of the highest public credit would then be present; namely, a rapid and efficient means for determining the validity of bonds and for enforcing their payment, and unquestioned ability to pay. With the possible exception of the newest of our Western States, the ability of our States to pay a very heavy load of indebtedness cannot be questioned, and would not be questioned by capitalists. The second advantage consists in the fact that in repudiating an illegal and unjust debt, States would have the strong backing of the highest judicial tribunal in this country, and would be saved the expense, the political complications, and the injury to public morality, which long-protracted agitation on the subject of repudiation is sure to involve.

A further defence of this policy may be found in the unquestionable right of the federal government to protect its own credit. The repudiation of debts by the States impairs the credit of the federal government as well as their own. This was demonstrated by the failure of our attempt to make a European loan in 1842, just after the announcement by Mississippi of her intention of

repudiating the Union Bank bonds. In regard to the effect upon our national credit caused by this and the failure of other States to meet their interest payments, our commissioner to negotiate the loan, W. Robinson, Jr., made the following statement: "In my intercourse with gentlemen of the highest integrity in the money circles of London, whose names are familiar to the American public, I did not long remain in ignorance of the prevailing sentiments with regard to the object of my solicitude. The defalcation of several of the States in the payment of interest, and the apprehension that the doctrine of repudiation, as it is termed, may prevail in others, has, as they say, produced a prejudice so deep and wide that until the doctrine has been abandoned throughout the land, American securities must remain without a market on the other side of the Atlantic. I was told that no house, however strong and influential in the money market of Europe, 'dare venture' to present an American loan to the British public, with the slightest hope that any portion of it would be taken off their hands. And although they professed to understand the nature of our confederacy, and entertain full confidence in its resources and fidelity, yet they could not, they said, undertake to explain satisfactorily to their friends, on whom they relied for a market, the distinction between State securities and those of the general government; and hence, should they have the temerity to take up

the loan, instead of being able to diffuse it among their pecuniary constituents, as was customary in such cases, they would be compelled to retire it as an inactive investment on their bureaus."

The statements of European financiers to Mr. Robinson are taken from his letter to the Secretary of the Treasury, and are explanatory of the failure of his mission. In another part of his letter he expresses the opinion that the motive for these statements was, in part at any rate, the desire to induce the United States government to assume the debts of the States; but he afterwards says on his own responsibility and authority that "the great body of the European public, who are the second-hand purchasers from bankers, do not understand the difference between the obligations of the States and those of the federal government. With them the fact that one State has failed to pay interest due is an argument against the purchase of any obligation to which that State is a party."¹

It is highly improbable that the general knowledge of our institutions in the possession of the investing public of Europe has increased to such an extent as to make the remark of Commissioner Robinson inapplicable to our day. At any rate, the credit of a country is such a delicate thing that a suspicion, even though it may have no foundation in fact, is sufficient to throw it into disorder. It cannot be doubted that the general repudiation of

¹ Ex. Doc. No. 197, Twenty-seventh Congress, 3d Session.

State debts at the present time would make it difficult to place a national loan in Europe, if that should be necessary or desirable. In view of this fact it may be argued that Congress would be justified in adopting the remedy proposed, or any other one that would make unjustifiable repudiation an impossibility.

There is one objection of a practical nature to this remedy which must not be overlooked. The repeal of the eleventh amendment could only be accomplished with the consent of the States; and it is highly improbable that an act of this sort would receive the number of votes requisite to make it a law. The love of the remnant of State sovereignty still possessed by the States, and the fear of unduly increasing the power of the federal government, are probably still too strong to admit of the passage of so radical a measure. The remedy, therefore, which would be practicable in the present state of public opinion, must not interfere with the present relation existing between the States and the federal government.

A remedy similar to the one under discussion is possible, which is not subject to the objections just mentioned. Each State might provide by constitutional amendment, or otherwise, for the adjudication by her own courts of cases to which she is a party, and which involve the question of the validity of her bonds. She might then invest her courts with the power to issue writs of *mandamus*.

mus against the officers intrusted with the collection of taxes, compelling them to include in their assessments an amount sufficient to cover the debts adjudged valid. Another writ compelling the treasurer to pay to the creditor the money thus collected for his benefit, would complete the transaction. The laws necessary to the carrying into execution of this plan could be more easily secured than the repeal of the eleventh amendment, and representing, as they would, an honest purpose and a desire on the part of the States to do justice to their creditors, they would furnish a solid foundation for the State credit, and erect an effectual barrier against repudiation. Most of the arguments presented in favor of the last-mentioned remedy would apply equally well to this one. It is practicable; it would be efficient; it would satisfy every demand which the federal government has a right to make with a view to the preservation of her own credit; and it would interfere in no way with the independence and true dignity of the States.

There is an objection, however, to this and to every plan which aims at compelling States in all cases to pay debts which have been adjudged valid by the courts. A State, as well as an individual, may become bankrupt. The claim has frequently been made in behalf of our Southern States that they were unable to pay their debts in full. Prominent men in Virginia have persistently claimed that if

the State should attempt to meet her interest obligations as they were defined in the funding act of 1871, she would be unable to provide education for her youth and support for her charitable and penal institutions. It must be admitted that States have duties and obligations which come before those of debt payment. If the claim of these Virginians is sound, we must admit that their State would be justified in scaling her debts or even in repudiating a portion of them. The first duty of a State is self-preservation, and for that the education of her youth and the proper punishment of her criminals are necessary.

In view of these facts, in any remedy proposed, some provision should be made for determining the ability of the State to pay, and for adjusting her debts to her abilities in case she has become overburdened. In applying the remedy last proposed, the courts might be empowered to pass judgment on these points, and, in case the State were bankrupt, to determine how much the creditors should receive. If it were thought undesirable to intrust such matters to the ordinary courts, a special tribunal might be provided for this purpose, and for the adjudication of the validity of bonds and the issue of the writs compelling the collection of an adequate tax and its payment to the bondholders.

A special tribunal of this sort, however, would be more susceptible to corrupt influences than ordi-

nary courts, and less apt to take into consideration all the interests and equities involved. An ideal tribunal would be a court made up of judges appointed for life, or during good behavior, who, like the judges of the Supreme Court of the United States, are removed as far as possible from the influences of party prejudice and political considerations. Supreme courts of States, whose judges partake of this character, are best fitted to undertake the delicate and responsible duties suggested. In no case should the appointment of such tribunals be left to State legislatures. Experience has demonstrated that these bodies often fail to deal justly with creditors, or to adopt those measures which make for the best interests of the State. Great wisdom, calm reflection, and intimate knowledge of the law and facts involved, freedom from every influence of a corrupting or political nature, should be the qualifications of men intrusted with such duties, and these qualifications are more apt to be found in judges than in legislators.

In closing this chapter it is fitting to make mention of the most obvious and most efficient remedy of all; namely, the inculcation of a high standard of morality into the minds and convictions of the people. Every citizen should regard a public debt as a sacred obligation, and should resent its repudiation as a personal disgrace. The American people appreciate fully the importance of good personal credit, and are keenly susceptible to the

disgrace which attends failure to meet personal obligations. When they shall have as fine an appreciation of the value of public credit, and as keen a susceptibility to the disgrace of public defalcation, the danger of repudiation will have been reduced to a minimum.

Our shortcomings in this country are chiefly the result of thoughtlessness and ignorance on the part of the masses. Our people are honest at heart, and desirous of doing what is right in public as well as private matters. They need a better knowledge of the social and economic necessities of a great people like that of the United States, and of the relation of individual prosperity and well-being to public honesty and public justice. The public press and the schools, colleges, and universities of our country have it in their power to furnish us the most efficient remedy against repudiation.

APPENDIX I.

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APPENDIX II.

STATISTICAL TABLES.

A.

TABLE showing fluctuations in the value of State securities from 1872 to 1879 inclusive, with the average value for the same time.¹

States	1872	1873	1874	1875	1876	1877	1878	1879	Average
Maine	100	100	100	100	100	100	100	100	100
New Hampshire	100	100	100	100	100	100	100	100	100
Vermont	100	100	100	100	100	100	100	100	100
Massachusetts	103	103	103	103	103	103	103	103	103
Rhode Island	99	99	99	102	107	110	105	110	104
Connecticut	99	99	99	103	105	109	106	106	103
New York	104	105	106	109	110	113	115	114	110
Pennsylvania	99	100	100	100	100	100	100	100	99
Maryland	102	102	102	102	102	102	102	102	102
Virginia	50	42	35	35	44	39	36	36	38
North Carolina	21	29	21	30	19	24	24	33	25
South Carolina	34	27	15	28	31	32	31	11	26
Georgia	73	87	68	81	98	101	104	107	90
Alabama	90	57	25	43	26	26	29	60	45
Louisiana	68	50	19	25	35	39	61	67	46
Texas	88	73	83	96	101	101	101	101	93
Arkansas	50	30	19	12	15	11	8	7	19
Tennessee	65	79	69	38	44	42	35	33	53
Kentucky	96	96	98	100	101	101	101	101	99
Ohio	100	101	100	102	107	106	104	106	103
Indiana	100	102	100	99	100	100	100	100	100
Illinois	99	95	95	99	101	100	102	103	99
Michigan	98	97	94	102	105	104	104	107	101
Missouri	94	90	90	96	101	103	104	105	98
California	110	110	110	105	105	105	105	105	107

B.

Table showing the assessed valuation of property in the Southern States in 1860 and 1870.²

¹ Taken from R. P. Porter's article in *International Review* for November, 1880.

² See Tenth Census, vol. vii. p. 8.

	1860	1870	Per cent of decrease
Arkansas	\$180,211,330	\$94,528,843	47.5
Virginia	657,021,336	505,978,190	23
North Carolina	292,297,602	130,378,180	55.4
South Carolina	489,318,128	183,913,387	62.4
Georgia	618,232,387	227,219,519	63.2
Florida	68,920,685	32,480,843	52.9
Alabama	432,198,762	155,582,595	64
Mississippi	500,472,912	177,278,890	65.5
Louisiana	435,787,265	253,371,890	41.9
Tennessee	382,485,200	253,782,161	33.7

C.

Table showing the growth of indebtedness in the Southern States, and the amount repudiated and scaled down between the period when the debt was greatest and June, 1880.¹

	1842	1852	1860
Virginia	\$6,964,307	\$13,573,355	\$31,779,002
North Carolina	None	997,000	9,699,000
South Carolina	5,691,234	3,144,931	4,046,540
Georgia	1,309,750	2,801,972	2,670,750
Florida	4,000,000	2,800	4,120,000
Alabama	15,400,060	8,500,000	6,700,000
Mississippi	7,000,000	7,271,707	None
Louisiana	23,985,000	11,492,566	4,561,100
Arkansas	2,676,000	1,506,562	3,092,623
Tennessee	3,198,166	3,776,856	20,898,606

1870	Highest point reached by the debt	1880	Amount of debt repudiated and scaled down between period when it was highest and June 1880
			when it was highest and June 1880
\$47,390,839	\$47,390,839	\$29,345,238	\$18,045,613
29,900,045	29,900,045	3,029,511	26,270,534
7,665,909	24,782,906	7,175,454	17,607,452
6,544,500	20,197,500	10,334,000	9,863,500
1,288,697	5,512,268	1,391,357	4,120,911
8,478,018	31,952,000	11,613,670	20,338,330
1,736,230	3,226,847	370,485	2,847,362
25,021,734	40,416,734	12,635,810	27,780,924
3,450,537	18,287,233	5,813,627	12,473,646
38,539,802	41,863,406	23,685,622	16,177,584

¹ Taken from R. P. Porter's article in *International Review* for November, 1880.

D.

Table showing debts of the New England, Middle, Southern, Western, and Pacific States in different years.¹

	1842	1852	1860
New England	\$7,158,274	\$6,862,060	\$7,308,060
Middle	73,348,072	79,510,726	86,416,045
Southern	73,340,017	64,499,727	174,486,452
Western	59,931,553	42,993,185	49,395,325
Pacific		2,159,403	
Total	<u>\$213,777,916</u>	<u>\$196,025,306</u>	<u>\$236,256,364</u>
	1870	1880	
New England	\$50,348,550	\$49,979,514	
Middle	79,834,481	45,672,575	
Southern	174,486,452	113,967,243	
Western	44,018,911	36,565,360	
Pacific	4,178,504	4,547,389	
Total	<u>\$352,866,898</u>	<u>\$250,732,081</u>	

E.

The following were the issues of Louisiana State bonds declared "questioned and doubtful" by the act of May 19, 1875.²

Bonds of the New Orleans and Nashville R.R.	\$18,000
" " Mexican Gulf R.R.	3,000
" " New Orleans, Jackson, and Great Northern R.R.	270,000
" " New Orleans, Opelousas, and Great Western R.R.	70,000
" " Vicksburg, Shreveport, and Texas R.R.	50,000
" " Baton Rouge, Grosse Tete, and Opelousas R.R.	30,000
" for relief of the treasury	65,500
" for the Free School Fund	<u>529,000</u>
<i>Carried forward,</i>	<u>\$1,044,500</u>

¹ Taken from R. P. Porter's article in *International Review* for November, 1880.

² See page 113.

<i>Brought forward,</i>	\$1,044,500
Bonds issued under act of Dec. 22, 1865	1,000,000
" " " " March 26, 1867	4,000,000
" " " " Feb. 24, 1870	2,960,000
" to the New Orleans, Mobile, and Texas R.R.	2,500,000
" to the North Louisiana and Texas R.R.	1,122,000
" to the Miss. and Mexican Gulf Ship Canal	480,000
" for relief of P. J. Kennedy	134,000
" redemption of certificates	250,000
" issued to Boeuff and Crocodile Navigation Company	80,000
Total	\$13,570,000

APPENDIX III.

EXTRACTS FROM THE CHARTER OF THE MISSISSIPPI UNION BANK AND THE ACT SUPPLEMENTARY THERETO.

An Act to incorporate the subscribers to the Mississippi Union Bank.

SECTION I. *Be it enacted by the legislature of the State of Mississippi,* That an institution shall be established under the title of "The Mississippi Union Bank," with a capital of fifteen million five hundred thousand dollars, which said capital shall be raised by means of a loan to be obtained by the directors of the institution.

SEC. 2. *Be it further enacted,* That books of subscription for the said fifteen million five hundred thousand dollars, divided into shares of one hundred dollars each, and intended to secure the loan of said fifteen million five hundred thousand dollars, shall be opened after twenty days' notice given in all the newspapers published in this State, and in all counties in which no newspaper shall be established, notice shall be given by advertisement posted up in three of the most public places in each of the said counties im-

mediately after the promulgation of this act, under the inspection of ten managers to be chosen by joint ballot by the legislature. . . .

SEC. 4. *Be it further enacted*, That the owners of real estate situated in the State of Mississippi, and who are citizens thereof, shall be the only persons entitled to subscribe; and shares so subscribed shall be transferable only to such owners until after five years, when they may be transferred to any owner of real estate in this State, whether citizens or not: *Provided, however*, to secure the capital or interest of said bank, mortgages shall be given on property of a sufficient character and of an imperishable nature.

SEC. 5. *Be it further enacted*, That in order to facilitate the said Union Bank for the said loan of fifteen million five hundred thousand dollars, the faith of this State be, and is hereby pledged, both for the security of the capital and interest, and that seven thousand five hundred bonds of two thousand dollars each . . . shall be signed by the Governor of the State, to the order of the Mississippi Union Bank, countersigned by the State Treasurer, and under seal of the State; said bonds to be in the following words; viz.,

\$2,000.

Know all men by these presents, that the State of Mississippi acknowledges to be indebted to the Mississippi Union Bank in the sum of two thousand dollars, which sum the said State of Mississippi promises to pay in current money of the United States, to the order of the president, directors, and company, in the year with interest at the rate of five per cent per annum, payable half yearly at the place named in the indorsement hereto; viz., —

On the of every year until the payment of the said principal sum: in testimony whereof the Governor of the State of Mississippi has signed, and the treasurer of the State has countersigned, these presents, and caused the seal

of the State to be affixed thereto, at Jackson, this in
the year of our Lord.

*Governor.
Treasurer.*

SEC. 8. *Be it further enacted,* That to secure the payment of the capital and interest of said bonds, the subscribers shall be bound to give mortgage to the satisfaction of the directors on property to be in all cases equal to the amount of their respective stock, which mortgage may bear on cultivated land, plantations, and slaves; on town lots with houses thereon; on other buildings yielding a rent; on lands not under cultivation but susceptible of being cultivated; and on vacant lots capable of being improved, with this provision, that not more than one-fifth of the stock of each stockholder may be secured by mortgage on unimproved lands not included in any plantation, and on vacant lots in town: no mortgage on slaves alone shall be received; and that when a mortgage shall be offered on lands and slaves, the value of the lands shall be equal to three-fourths of the stock for which the mortgage shall be given. . . .

SEC. 12. *Be it further enacted,* That after the closing of the books, and when it shall appear that at least five hundred thousand dollars shall have been subscribed and paid in on the original stock of the capital of said bank, the said institution shall go into immediate operation under the provision hereinafter mentioned.

(Approved Feb. 5, 1838.)

An Act supplementary to an act to incorporate the subscribers to the Mississippi Union Bank.

SECTION 1. *Be it enacted by the legislature of the State of Mississippi,* That as soon as the books of subscription for stock in the said Mississippi Union Bank are opened, the Governor of this State is hereby authorized and required to subscribe for, in behalf of this State, fifty thousand shares of the stock of the original capital of the said bank; the

same to be paid for out of the proceeds of the State bonds to be executed to the said bank as already provided for in the said charter; and that the dividends and profits which may accrue and be declared by the bank on the said stock subscribed for in behalf of the State, shall be held by the said bank subject to the control of the State legislature for the purposes of internal improvement.

SEC. 9. *Be it further enacted*, That the president and directors of the said Mississippi Union Bank, or the managers thereof, shall have ample power to appoint three commissioners to negotiate and sell the State bonds, provided for in the fifth section of the act incorporating the subscribers to the Mississippi Union Bank, in any market within the United States, or in any foreign market, under such rules and regulations as may be adopted by said president and directors or managers, not inconsistent with the provisions of the charter of said bank: *Provided*, said bonds shall not be sold under their par value, and that said commissioners shall not accept of any commission or agency from any other banking or railroad company whatsoever for the disposal of any bonds for the raising of money, or act as agents for the procuring of loans upon the pledge of real estate for the benefit of any other corporation.

(Approved Feb. 15, 1838.)

APPENDIX IV.

EXTRACTS FROM THE MCCULLOCH, RIDDLEBERGER, AND DEBT-SETTLEMENT ACTS OF VIRGINIA.

ACTS OF THE ASSEMBLY OF VIRGINIA, 1878-79, CHAP. 24.—

An Act to provide a plan of settlement of the public debt.

Whereas it is believed by the General Assembly that the rate of interest heretofore agreed to be paid by the State on the public debt is greater than can be borne without destroy-

ing the industrial interests of the State; and whereas the council of foreign bondholders of London, England, and the funding association of the United States of America, limited, have, in view of this belief, expressed their willingness to jointly endeavor to obtain the consent of the creditors to an abatement in the rate of interest; and whereas it is highly expedient, in the best interests of the State, to secure an amicable settlement with the creditors by which the credit of the State may be restored and enhanced, and the aggregate amount of interest payable by the State reduced within limits which will not be too onerous to the State; therefore,

1. *Be it enacted by the General Assembly of Virginia,* That to provide for the funding the debt of the State, the Governor is hereby authorized to create bonds of the State, registered and coupon, dated the first day of January, eighteen hundred and seventy-nine, the principal payable forty years thereafter, bearing interest at the rate of three per centum per annum for ten years, and at the rate of four per centum per annum for twenty years, and at the rate of five per centum per annum for ten years, payable in the cities of Richmond, New York, or London, as hereinafter provided, on the first days of July and January of each year, until the principal is redeemed. . . . The coupons of said bonds shall be receivable at and after maturity for all taxes, debts, dues, and demands due the State, and this shall be expressed on their face. The holder of any registered bond shall be entitled to receive from the treasurer of the State a certificate for any interest thereon due and unpaid, and such certificate shall be receivable for all taxes, dues, and demands due the State, and this shall be expressed on the face of the registered bond and on the face of such certificate. All obligations created under this act shall be forever exempt from all taxation, direct or indirect, by the State, or by any county or corporation therein, and this shall be expressed on the face of the bonds. . . . The bonds hereby authorized

shall be issued only in exchange for the outstanding debt of the State, as hereinafter provided.

2. For purposes of designation, the outstanding indebtedness of the State, as follows, to wit:

Class I., which shall be taken to include all tax-receivable coupon bonds, and all registered bonds and fractional certificates which are convertible under the act approved March thirtieth, eighteen hundred and seventy-one, into such tax-receivable coupon bonds.

Class II., which shall be taken to include all bonds funded under the act approved March thirtieth, eighteen hundred and seventy-one, as amended by the act approved March seventh, eighteen hundred and seventy-two; and also two-thirds of the face value, with two-thirds of the unpaid accrued interest up to the first of July, eighteen hundred and seventy-one, on all unfunded bonds, including sterling bonds.

3. The outstanding indebtedness of the State shall be funded in the new bonds to be issued under this act as follows: Bonds shall be presented for exchange with all coupons attached maturing after the date of presentation, and shall be exchanged at the face value of said bonds, dollar for dollar, for the new bonds, with all coupons attached maturing after the date of said presentation: provided that the proportion of Class II. refunded shall never exceed in amount one-third of the total amount refunded, until eighteen million dollars of Class I. have been retired. The new bonds to be issued may be coupon or registered at the option of the holder, and at the like option coupon bonds may at any time be converted into registered bonds.

4. All due and unpaid interest may be funded under the provisions of this act at the rate of fifty cents on the dollar, and shall be fundable at that rate under the third section of this act, and taken, under the provisions of said section, in lieu of bonds of Class II.

5. If on or before the first day of May, eighteen hundred

and seventy-nine, the council of foreign bondholders and the funding association of the United States of America aforesaid shall file with the Governor their assent to and acceptance of the terms of this act, the same shall be taken to be a contract between the State and the said corporation, and the Governor shall forthwith provide for the preparation of the bonds provided for by this act. . . .

8. The General Assembly will, by necessary and appropriate legislation, provide for the prompt payment of the interest on the bonds issued under this act.

9. In the year eighteen hundred and eighty-five, and annually thereafter until all the bonds issued under and by authority of this act are paid, there shall be levied and collected the same as and together with other taxes, a tax of two cents on the one hundred dollars of the assessed valuation of all the property, personal, real, and mixed, in the State, which shall be paid into the treasury of the State to the credit of the sinking fund. The treasurer, the auditor of public accounts, and second auditor, are hereby appointed Commissioners of the Sinking Fund, and shall have (a majority acting) the control and management thereof, and shall annually, or oftener, apply whatever sum or sums may be to the credit of the sinking fund to the purchase and redemption of funds issued under this act. . . .

12. Whenever there shall not be a sufficient amount of money in the treasury of the State to meet the accruing interest on the said bonds promptly, the auditor is hereby authorized and directed, by and with the advice of the Governor of Virginia, to raise by temporary loan, to be returned out of the accruing revenues of the State, a sum sufficient to enable him to meet promptly the said interest as it accrues. And in case the auditor shall not be able to raise a sufficient sum for the said purpose by loan, he is hereby authorized and directed to issue non-interest-bearing certificates of indebtedness of this State, to be signed by himself and countersigned by the treasurer, and properly registered

in the offices of the auditor and treasurer, for the sum of one dollar and multiples thereof, the same to be printed from plates, which shall be the property of the State, and to sell the same at not less than a minimum price to be fixed by the Commissioners of the Sinking Fund, which shall not be less than seventy-five cents on the dollar. The said certificates shall be receivable for all taxes, debts, dues, and demands due the State, and this shall be expressed on their face. . . .

13. The act approved March fourteenth, eighteen hundred and seventy-eight, and all acts inconsistent with the provisions of this act, are hereby appealed.

(Approved March 28, 1879.)

ACTS OF THE ASSEMBLY OF VIRGINIA, 1881-82, CHAP. 84.—

An Act to ascertain and declare Virginia's equitable share of the debt created before, and actually existing at the time, of the partition of her territory and resources, and to provide for the issuance of bonds covering the same, and the regular and prompt payment of interest thereon.

Whereas to the end which this act comprehends, a full statement of the debt is essential, and whereas the following has been carefully made up from the records of the second auditor's office of the State, it is confidently submitted as presenting a true state of the account between the State and her creditors — the account is as follows: [Here follows an itemized statement of the debt.]

And whereas by this account it appears that Virginia owes her creditors, as of the first July, eighteen hundred and eighty-two, including the bonds held by the Literary Fund, and arrears of interest thereon cast to such date, twenty-one million, thirty-five thousand, three hundred and seventy-seven dollars and fifteen cents; and that she may cause to be issued her own bonds for the same, and provide for the certain payment of interest thereon; that is for her equitable share of the bonds known as consols, and here

designated as class A, and whereof there are outstanding fourteen million, three hundred and sixty-nine thousand, nine hundred and seventy-four dollars and eighty-one cents; and for her equitable share of the bonds known as ten-forties, and here designated as class B, and whereof there are outstanding eight million, five hundred and seventeen thousand, six hundred dollars; and for her equitable share of the bonds known as peeler, and here designated as class C, and whereof there are outstanding two million, three hundred and ninety-four thousand, three hundred and five dollars and twelve cents; and for her equitable share of the interest thereon, designated as class D, and whereof there is now in arrears nine hundred and twenty-eight thousand, eight hundred and eighty-seven dollars and forty-five cents, and counted to the first of July, eighteen hundred and eighty-two, makes the amount of such interest, then to be in arrears, one million, seventy-two thousand, five hundred and forty-five dollars and seventy-five cents; and for her equitable share of the bonds known as unfunded bonds—dollar and sterling—here designated as class E, and whereof there are now outstanding, computed at two-thirds, three million, seven hundred and seventy-three thousand, four hundred and ninety-three dollars and sixty-eight cents; and for her equitable share of the interest thereon now in arrears, two million, six hundred and thirty-six thousand, four hundred and forty-four dollars and thirty-four cents, and counted to the first of July, eighteen hundred and eighty-two, making as of that date (two hundred and twenty-six thousand, four hundred and nine dollars and sixty-two cents more), the sum of two million, eight hundred and sixty-two thousand, eight hundred and fifty-three dollars and ninety-six cents, and here designated as class F; and for her equitable share of the bonds held by the Commissioners of the Literary Fund, whereof there are one million, four hundred and twenty-eight thousand, two hundred and forty-five dollars and twenty-five cents; and whereas the rate of interest which any people can

safely undertake to pay must be determined by the measure of their productive resources ; and whereas these have long been burdened by a rate of taxation which is conceded to be as high as can be endured ; and whereas the means of prompt and certain payment should be apparent to the creditor, while the people have assurance for the support of government and the maintenance of their schools, as required by the constitution ; and whereas the net revenues of the State, remaining and so derived, after providing for the proper and gradual liquidation of the balance of the moneys heretofore diverted from the public free school fund, after liquidating gradually the arrearages to the Literary Fund, and leaving some small margin for the immediate and subsequent exigencies which are, and are likely to be demanded by the public welfare — notably in respect to the humane institutions, now inadequate to the proper accommodation of that unfortunate class of every population — do not warrant the assumption of a larger rate of interest than three per centum upon the full amount of Virginia's equitable share of the debt of the old and entire State, as the same is ascertained and now formally declared by the foregoing account ; therefore,

1. *Be it enacted by the General Assembly of Virginia,* That the Board of Commissioners of the Sinking Fund of the State be, and they are hereby empowered and directed to create bonds, registered and coupon, to such extent as may be necessary to comply with the provisions of this act.

2. The said bonds shall be dated July first, eighteen hundred and eighty-two, and be payable at the office of the treasurer of the State on the first day of July, nineteen hundred and thirty-two : provided that the State may, at any time and from time to time, after July first, nineteen hundred, redeem any part of the same, principal and interest, at par. In case of such redemption before maturity, the bonds to be paid shall be determined by lot by said Board of Commissioners, and notice of the bonds so selected

to be paid shall be given in a newspaper published in Richmond, New York, and London, England, when interest from and after ninety days from the date of said publication in London shall cease upon the bonds so designated to be paid.

5. The said Board of Commissioners are authorized to issue such bonds, in denominations of five hundred and one thousand dollars, as may be necessary to carry out the provisions of this act, each denomination to be of different tint: provided that registered bonds may be issued of any denomination, multiple of one hundred; all registered bonds to be of the same tint; and they are authorized and directed to issue such bonds, registered or coupon, in exchange for the outstanding evidences of debt hereinbefore enumerated, including the bonds held by the Literary Fund, as follows, that is to say:

(a) For her equitable share of class A, at the rate of fifty-three per centum; that is to say, fifty-three dollars of the bonds authorized under this act (principal and accrued interest at par from the preceding period of maturity to the date of exchange) are to be given for every one hundred dollars, face, principal, and accrued interest from the preceding semi-annual period of maturity to the date of exchange of such evidences of debt, and for any interest which may be past due and unpaid upon the same, funded bonds issued under this act may be given, dollar for dollar.

(b) For her equitable share of class B, at the rate of sixty per centum, reckoning and accounting for any interest, as provided in the case of class A.

(c) For her equitable share of class C, at the rate of sixty-nine per centum, reckoning any current interest at the date of exchange as in the cases of classes A and B, and accounting for the same as provided in class D.

(d) For her equitable share of class D, at the rate of eighty per centum.

(e) For her equitable share of class E, at the rate of sixty-nine per centum, reckoning any current interest at

the date of exchange as in the cases of classes A, B, and C, and accounting for the same as provided in class F.

(f) For her equitable share of class F, at the rate of sixty-three per centum.

(g) For her equitable share of the bonds of the Literary Fund, as in the case of class C; her equitable share of the arrearages of interest — three hundred and seventy-nine thousand, two hundred and seventy dollars — to be paid in money.

6. For all balances of such indebtedness, constituting West Virginia's share of the old debt, principal and interest, in the settlement of Virginia's equitable share as aforesaid, the said Board of Sinking Fund Commissioners shall issue a certificate as follows:

No. ——

The commonwealth of Virginia has this day discharged her equitable share of the (registered or coupon, as the case may be) bond for —— dollars, held by ——, dated the —— day of ——, and numbered ——, leaving a balance of —— dollars, with interest from ——, to be accounted for by the State of West Virginia, without recourse upon this commonwealth.

Done at the capital of the State of Virginia, this —— day of ——, eighteen ——.

_____, *Second Auditor.*

_____, *Treasurer.*

11. In the year eighteen hundred and ninety, and annually thereafter until all the bonds issued under and by authority of this act are paid, there shall be set apart of the revenue collected from the property of the State each year, two and one-quarter per centum upon the bonds at the time outstanding, which shall be paid into the treasury to the credit of the Sinking Fund, and the Commissioners of the said Sinking Fund shall, annually or oftener, apply the same to the redemption or purchase (at the rate not above par)

of the bonds issued under this act, and the bonds so redeemed shall be cancelled by the said Board, and the same registered by the second auditor in a book to be kept for the purpose, giving the number, the date of issue, the character, the amount, and the owner at the time of purchase of the bonds so redeemed and cancelled; and in case no such purchase of bonds can be made, then the amount which can be redeemed shall be called in by lot, as provided in section two of this act.

15. That from and after the passage of this act, no bonds, certificates, or other evidences of indebtedness, shall be issued for any portion of the debt of this State, nor shall any interest be paid upon any part or portion of said debt, except as hereinbefore provided.

(Approved Feb. 14, 1882.)

SENATE BILL No. 368.

An Act to provide for the settlement of the public debt of Virginia not funded under the provisions of an act entitled "An Act to ascertain and declare Virginia's equitable share of the debt created before and actually existing at the time of the partition of her territory and resources, and to provide for the issuance of bonds covering the same, and the regular and prompt payment of interest thereon," approved February 14, 1882.

Whereas, By a joint resolution of the General Assembly of the State of Virginia, adopted on the third day of March, eighteen hundred and ninety, a commission was appointed on the part of Virginia to receive propositions for funding the debt of the State not funded under the act known as the "Riddleberger Bill," approved February fourteenth, eighteen hundred and eighty-two, from a properly constituted representative of her creditors; and

Whereas, Said Virginia Debt Commission has submitted a report to the General Assembly, wherein it appears that

under a certain agreement, dated May twelfth, eighteen hundred and ninety, lodged with the Central Trust Company of New York, Frederick P. Olcott, William L. Bull, Henry Budge, Charles D. Dickey, Jr., Hugh R. Garden, and John Gill, constituting a committee for certain of the creditors of Virginia, called the "Bondholders' Committee," have proposed to said commission to surrender to the State in bulk not less than twenty-three millions of dollars of the public debt, unfunded under said act approved February fourteenth, eighteen hundred and eighty-two, in exchange for an issue of new bonds, as hereinafter specified, the same to be apportioned between the several classes of creditors by a tribunal which the said creditors have themselves appointed; and that, in pursuance of said proposal, an agreement has been entered into unanimously between the said commission and the said bondholders' committee, subject to approval by the General Assembly, whereby in exchange for the said unsettled obligations of the State held by the public, which were issued prior to February fourteenth, eighteen hundred and eighty-two (exclusive of evidences of debt held by the public institutions of the Commonwealth pursuant to law and by the United States), together with the interest thereon to July first, eighteen hundred and ninety-one, inclusive, aggregating about twenty-eight millions of dollars, there shall be issued nineteen millions of dollars of new bonds, dated July first, eighteen hundred and ninety-one, and maturing one hundred years from said date, with interest thereon at the rate of two per centum per annum for ten years from said first day of July, eighteen hundred and ninety-one, and three per centum per annum for ninety years thereafter to the date of maturity, said interest to be payable semi-annually; of which aggregate debt of about twenty-eight millions of dollars the said bondholders' committee represent that they now hold and agree to surrender not less than twenty-three millions of dollars; and

Whereas, Said report and agreement contemplate the surrender of the obligations held by the bondholders' committee as an entirety, and do not contemplate an apportionment by the General Assembly between the various classes of creditors so represented by said bondholders' committee, the same having been committed to a distributing tribunal, as hereinbefore recited; and

Whereas, it is the desire and intention of the General Assembly that a settlement of all the other outstanding obligations of the State (except those issued under the act of February fourteenth, eighteen hundred and eighty-two, the evidences of debt held by the public institutions of the State in pursuance of law and by the United States) as well as those controlled by the bondholders' committee, as aforesaid, shall be made under the provisions of this act; therefore —

1. *Be it enacted by the General Assembly of Virginia,* That the commissioners of the sinking fund, a majority of whom may act, be and they are hereby empowered and directed to create "listable" engraved bonds, registered and coupon, to such an extent as may be necessary to issue nineteen million of dollars of bonds in lieu of the twenty-eight million dollars of outstanding obligations, not funded under the act approved February fourteenth, eighteen hundred and eighty-two, hereinbefore recited.

2. The said bonds shall be dated July first, eighteen hundred and ninety-one, and be payable at the office of the treasurer of the State, or at such agency in the city of New York as may be designated by the State, on the first day of July, nineteen hundred and ninety-one, and shall bear interest from date, payable semi-annually on the first days of January and July in each year, at the rate of two per centum per annum for the first ten years, and three per centum per annum for the remaining ninety years; the said interest may be payable in Richmond, New York, and London, or at either place, as may be designated by the State;

provided, that the State may at any time and from time to time after July first, nineteen hundred and six, redeem any part of the same at par of the principal with accrued interest. In case of such redemption before maturity, the bonds to be paid shall be determined by lot by said Commissioners of the Sinking Fund, and notice of the bonds so selected to be paid shall be given by publication beginning at least ninety days prior to an interest-due date, in a newspaper published in Richmond, Virginia, one in New York City, and one in London, England; and the interest from and after the next succeeding interest-due date shall cease upon the bonds so designated to be paid: provided, that no registered bonds shall be so redeemed while there are any coupon bonds outstanding. . . .

5. Said Commissioners of the Sinking Fund are authorized to issue coupon bonds in denominations of five hundred and one thousand dollars each, as may be necessary to carry out the provisions of this act: provided that registered bonds may be issued of the denominations of one hundred dollars, five hundred dollars, one thousand dollars, five thousand dollars, ten thousand dollars; and they are authorized and directed to issue said bonds, registered or coupon, in exchange for the said outstanding obligations up to and including July first, eighteen hundred and ninety-one (exclusive of evidences of debt held by public institutions of the Commonwealth as aforesaid and by the United States) as follows:

A. Said bondholders' committee may at any time on or before the thirtieth day of June, eighteen hundred and ninety-two, present to said commissioners for verification bonds and other evidences of debt, and coupons or other evidences of interest thereon, obligations of the State of Virginia, held by said committee, for exchange as aforesaid; and said commissioners shall determine whether the obligations so presented are genuine obligations of the State and whether the coupons or other evidences of interest

represent interest accrued on such obligations (exclusive of evidences of debt held by public institutions of the Commonwealth as aforesaid and by the United States).

B. Such of the obligations so presented for verification as may be determined by said commissioners to conform to the requirements of paragraph A hereof, shall be sealed in convenient packages as the examination proceeds. Each of the packages shall be numbered, and upon each package shall be indorsed the amount and character of the obligations therein contained. Such indorsement on each package shall be signed by said commissioners or a majority thereof, and the package shall then be delivered to said committee or its agent. Said commissioners shall keep in a book to be provided for the purpose a record of the numbers of all such packages and of the amount and character of the obligations contained in each. Such obligations presented by said bondholders' committee as do not conform to the requirements of paragraph A hereof shall be returned to said committee; but said commissioners shall keep a record thereof in the book aforesaid.

C. After said bondholders' committee shall have presented to said commissioners for verification bonds and other evidences of debt and coupons, or other evidences of interest thereon accrued on or before July first, eighteen hundred and ninety-one, obligations of the State of Virginia, all conforming to the requirements of paragraph A hereof, as determined by said commissioners, and amounting in the aggregate to not less than twenty-three millions of dollars, after deducting one-third of the principal and interest of such obligations as were issued prior to the thirtieth day of March, eighteen hundred and seventy-one, and also deducting one-third of the principal and interest of such obligations as were issued under the act approved the thirtieth day of March, eighteen hundred and seventy-one, as do include West Virginia's proportion, said bondholders' committee may at any time on or prior to the thirtieth day

of June, eighteen hundred and ninety-two, present the same in bulk to said commissioners for surrender and exchange as herein provided. All coupons matured or to mature on coupon bonds after July first, eighteen hundred and ninety-one, or coupons of like class and amount, or the face value thereof in cash shall be surrendered with such bonds, the said cash to be returned if proper coupons are subsequently tendered. And when the said bondholders' committee shall have presented for exchange the obligations aforesaid to an amount of twenty-three millions of dollars or more, if the engraved bonds hereinbefore authorized are not ready for exchange, the said commissioners shall, upon application of said bondholders' committee, issue to said bondholders' committee a manuscript registered bond of the State of Virginia, substantially of the form of the bond hereinbefore specified, for the aggregate amount to which the said committee may be entitled for the obligations so presented under this act, the said bond to be exchangeable for the engraved bonds aforesaid of character and amount required by said committee, as prescribed in this act, and interest in the mean time on said manuscript bond shall be paid as herein provided for on the engraved bonds.

D. The said new bonds shall be issued to said bondholders' committee by the said commissioners in the following proportion, to wit: nineteen thousand dollars of the new bonds to be created under this act shall be issued for every twenty-eight thousand of old outstanding obligations (principal and interest to July first, eighteen hundred and ninety-one), as aforesaid, surrendered by said bondholders' committee to the said commissioners, after the deductions provided for in paragraph C of this section; and a proportionate amount of said new bonds shall be issued for smaller sums of said outstanding obligations so surrendered: provided that no certificates issued on account of the proportion of West Virginia of the obligations of the State shall be funded under this act. When said bondholders' committee

shall have surrendered and exchanged such obligations as aforesaid to the amount of at least twenty-three million dollars, said committee may at any time thereafter up to and including the thirtieth day of June, eighteen hundred and ninety-two, present to said commissioners for verification, surrender, and exchange additional obligations, principal and interest, as aforesaid; all coupons matured or to mature on coupon bonds after July first, eighteen hundred and ninety-one, or coupons of like class and amount, or the face value thereof in cash, to be presented with such bonds, the cash, if paid, to be returned if proper coupons are subsequently tendered. After said commissioners shall have determined that said obligations conform to the requirements of paragraph A hereof, said commissioners shall accept the obligations so presented for surrender and exchange by said committee, and shall deliver to said committee, in exchange therefor new bonds issued under the provisions of this act in the same proportion as is set out in this paragraph of this section, after making the deductions provided for in paragraph C of this section.

E. If on making the exchange provided for in this act said committee shall be found entitled to a fractional amount or amounts less than one hundred dollars in addition to the new bonds delivered to it, said Commissioners of the Sinking Fund shall issue to the committee a certificate or certificates for such amount or amounts. Such fractional certificates shall be exchangeable for the bonds authorized by this act to be issued in sums of one hundred dollars, or any multiple thereof, and certificates of like character shall be issued for any fractional amount which may remain in making the exchange.

6. For all balances of the indebtedness, constituting West Virginia's share of the old debt, principal and interest, in the settlement of Virginia's equitable share of the bonds authorized to be exchanged under this act, the said share having been heretofore determined by the Commonwealth

of Virginia, the said commissioners shall issue certificates substantially in the following form, viz.: :

No. ——. The Commonwealth of Virginia has this day discharged her equitable share of the (registered or coupon, as the case may be) bond for —— dollars, dated —— day of ——, and No. ——, leaving a balance of —— dollars, with interest from ——, to be accounted for to the holder of this certificate by the State of West Virginia, without recourse upon this Commonwealth.

Done at the capital of the State of Virginia, this —— day of ——, eighteen hundred and ninety-two.

— — —, Second Auditor.

— — —, Treasurer.

The certificates so issued under sections five and six of this act shall be recorded by the second auditor in a book kept for that purpose, giving the date and number of the transaction to which it refers, the amount of certificates, and the name of the person or corporation to whom issued and delivered; and as such certificates, authorized by paragraph E, section five of this act, are exchanged, the same shall be cancelled and preserved as herein provided in respect to the evidences of debt refunded.

7. The Commissioners of the Sinking Fund are hereby authorized and required to receive on deposit for verification, classification, and exchange such of the said obligations of the State as may be presented to said commissioners; provided, that said commissioners shall not receive on deposit for the purposes aforesaid any outstanding obligations of the State which have been once deposited with the bondholders' committee, or may be hereafter deposited with them; the said verification and exchange for the new bonds of the obligations so deposited to be conducted in the same manner as hereinbefore provided with respect to the obligations deposited with the said bondholders' committee; and the said Commissioners of the Sinking Fund shall issue

to and distribute amongst said depositing creditors after they have fully complied with the terms of this act, in exchange for the obligations so deposited, bonds authorized by this act as follows, viz. : To each of the several classes of said depositing creditors the same proportion, as nearly as may be found in their judgment practicable by the Commissioners of the Sinking Fund, as the same class shall receive under the distribution which shall be made by the commission for the creditors represented by the bondholders' committee: provided, that no obligations shall be received for such deposit after the thirtieth day of June, eighteen hundred and ninety-two, nor shall any coupon bonds be received which do not have attached thereto all the coupons maturing after July first, eighteen hundred and ninety-one; but for any such coupons as may be missing, coupons of like class and amount, or the face value thereof in cash, may be received; the said cash, if paid, to be returned if proper coupons are subsequently tendered; and each depositor shall, when he receives his distributive share of the said new issue of bonds, pay to the Commissioners of the Sinking Fund three and one-half per centum in cash of the par value of the bonds received by him, or a commission equal in amount to that which may at any time hereafter be fixed by the said committee of bondholders upon any bonds deposited with them, not, however, in any case to exceed three and one-half per cent; and said Sinking Fund Commissioners shall cover the fund thus received into the treasury of the Commonwealth. . . .

10. In the year nineteen hundred and ten, and annually thereafter, there shall be set apart of the revenue collected from the property of the State each year up to and including the year nineteen hundred and twenty-nine, one-half of one per cent upon the bonds issued under this act, as well as upon the outstanding bonds issued under act approved February fourteenth, eighteen hundred and eighty-two; and in the year nineteen hundred and thirty, and annually

thereafter until all the bonds issued under this act and the said act approved February fourteenth, eighteen hundred and eighty-two, are paid, there shall be set apart of the revenue collected from the property of the State each year one per cent upon the outstanding bonds issued under the aforesaid acts, which shall be paid into the treasury to the credit of the sinking fund, and the Commissioners of the Sinking Fund shall annually, or oftener, apply the same to the redemption or purchase (at a rate not above par and accrued interest) of the bond issued under the aforesaid acts, and the bonds so redeemed shall be cancelled by the said commissioners and the same registered by the second auditor in a book to be kept for that purpose, giving the number and date of issue, the character, the amount, and the owner at the time of purchase, of the bonds so redeemed and cancelled; and in case no such purchase of bonds can be made, then the amount which can be redeemed shall be called in by lot, as provided in section two of this act. All bonds of the State issued under the provisions of the act aforesaid, approved February fourteenth, eighteen hundred and eighty-two, and now held by said Commissioners of the Sinking Fund, shall as soon as at least fifteen millions of dollars of new bonds shall have been issued and delivered pursuant to the provisions of this act, be cancelled by said commissioners and preserved in the office of the treasurer of the Commonwealth.

12. All coupons heretofore tendered for taxes and held by said tax-payers in pursuance of such tender, shall be received in payment of the taxes for which they were tendered, and upon their delivery to the proper collector or the amount thereof in money, the judgments obtained against the said tax-payers for such taxes shall be marked satisfied: provided the said tax-payers shall have paid in money, and not in coupons, the costs of said judgments. All coupons heretofore tendered for taxes and held by the officers of the Commonwealth for verification in pursuance

of the statute in such case made and provided, shall be received in payment of the taxes for which they were tendered, and the money collected for such taxes returned to the parties from whom it was received: provided the said tax-payers shall have paid in money, and not in coupons, all costs incurred in legal proceeding to verify said coupons.

13. The treasurer of the Commonwealth is authorized and directed to pay the interest on the bonds issued under this act as the same shall become due and payable out of any money in the treasury not otherwise appropriated.

16. The act entitled "An act to ascertain and declare Virginia's equitable share of the debt created before and actually existing at the time of the partition of her territory and resources, and to provide for the issuance of bonds covering the same, and the regular and prompt payment of interest thereon," approved February fourteenth, eighteen hundred and eighty-two, and the amendments thereto, to-wit: An act entitled "An act to declare the true intent and meaning of, and to amend and re-enact section five of chapter eighty-four of acts eighteen hundred and eighty-one and eighteen hundred and eighty-two, approved February fourteenth, eighteen hundred and eighty-two," approved August twenty-seventh, eighteen hundred and eighty-four; and the act entitled "An act to amend and re-enact an act approved August twenty-seventh, eighteen hundred and eighty-four, entitled an act to declare the true intent and meaning of, and to amend and re-enact section five of chapter eighty-four of acts of eighteen hundred and eighty-one and eighteen hundred and eighty-two, approved February fourteenth, eighteen hundred and eighty-two," approved November twenty-ninth, eighteen hundred and eighty-four, are hereby repealed.

17. The Commissioners of the Sinking Fund are authorized, if it shall seem to them for the best interest of the Commonwealth, to make one extension of the time for the

funding of the said twenty-eight millions of dollars of outstanding evidences of debt for a period not exceeding six months from the thirtieth day of June, eighteen hundred and ninety-two.

APPENDIX V.

EXTRACTS FROM THE INTERNAL IMPROVEMENTS AND THE DEBT-SETTLEMENT ACT OF TENNESSEE.

ACTS OF TENNESSEE, 1851-52, Chap. 151 — *An Act to establish a system of internal improvements in this State.*

SECTION 1. *Be it enacted by the General Assembly of the State of Tennessee,* That whenever the East Tennessee and Virginia Railroad Company shall have procured *bona fide* subscriptions for the capital stock in said company to an amount sufficient to grade, bridge, and prepare for the iron rails the whole extent of the main trunk line proposed to be constructed by said company, and it shall be shown by said company to the Governor of the State that said subscriptions are good and solvent, and whenever said company shall have graded, bridged, and shall have ready to put down the necessary timbers for the reception of rails, and fully prepared a section of thirty miles of said road at either terminus in a good and substantial manner, with good materials, for putting on the iron rails and equipments, and the Governor shall be notified of these facts, and that said section or any part thereof is not subject to any lien whatever other than those created in favor of the State by the acts of 1851-52 by the written affidavits of the chief engineers and president of said company, together with the written affidavit of a competent engineer, by him appointed at the cost of the company to examine said section, then said Governor shall issue to said company *coupon* bonds of the State of Tennessee to an amount not exceeding

eight thousand dollars per mile on said section, and on no other condition, which bonds shall be payable at such place in the United States as the president of the company may designate, bearing an interest of *six per cent per annum*, payable semi-annually, and not having more than forty nor less than thirty years to mature.

SEC. 2. *Be it enacted*, That the bonds before specified shall not be used by said company for any other purpose than for procuring the iron rails, chairs, spikes, and equipments for said section of said road, and for putting down said iron rails. . . .

SEC. 3. *Be it enacted*, That so soon as the bonds of the State shall have been issued for the first section of the road as aforesaid, they shall constitute a lien upon said section so prepared as aforesaid, including the road-bed, right of way, grading, bridges, and masonry, upon all the stock subscribed for in said company, and upon said iron rails, chairs, spikes, and equipments, when purchased and delivered, and the State of Tennessee, upon the issuance of said bonds and by virtue of the same, shall be invested with said lien or mortgage without a deed from the company, for the payment by said company of said bonds, with the interest thereon as the same becomes due.

SEC. 4. *Be it enacted*, That when said company shall have prepared as aforesaid a second section, or any additional number of sections, of twenty miles each of said road, connecting with the section already completed, for the iron rails, chairs, spikes, and equipments, as provided in the first section of this act, and the Governor shall be notified of this fact as before provided, he shall in like manner issue to said company like bonds of the State of Tennessee to an equal amount with that before issued under the first section of this act, for each and every section of twenty miles of said road so prepared as aforesaid, but upon the terms and conditions hereinbefore provided, and upon the issuance of the said bonds, the State of Tennessee

shall be invested with a like mortgage or lien, without a deed from said company, upon said stock and upon said first and additional section or sections of said road so prepared, upon the rails and equipments put or to be put upon the same, for the payment of said bonds and the accruing interest thereon. . . .

SEC. 5. *Be it enacted*, That it shall be the duty of said company to deposit in the Bank of Tennessee at Nashville at least fifteen days before the interest becomes due from time to time, upon said bonds issued as aforesaid, an amount sufficient to pay such interest, including exchange and necessary commissions, or satisfactory evidence that said interest has been paid or provided for, and if said company fail to deposit said interest as aforesaid, or furnish the evidence aforesaid, it shall be the duty of the comptroller to report that fact to the Governor, and the Governor shall immediately appoint some suitable person or persons, at the expense of the company, to take possession and control of said railroad and all the assets thereof, and manage the same and receive the rents, issues, profits, and dividends thereof, whose duty it shall be to give bond and security to the State of Tennessee in such penalty as the Governor may require, for the faithful discharge of his or their duty as receiver or receivers to receive said rents, issues, profits, and dividends, and pay over the same under the direction of the Governor towards the liquidation of such unpaid interest. . . .

SEC. 6. *Be it enacted*, That if said company shall fail or refuse to pay any of said bonds when they fall due, it shall be the duty of the Governor to notify the Attorney-General of the district in which is situated the place of business of said company, of the fact, and thereupon said Attorney-General shall forthwith file a bill against said company in the name of the State of Tennessee in the chancery or circuit court of the county in which is situated said place of business, setting forth the facts, and thereupon said court

shall make all such orders and decrees in said cause as may be deemed necessary by the court to receive the payment of said bonds with the interest thereon, and to indemnify the State of Tennessee against any loss on account of the issuance of said bonds by ordering said railroad to be placed in the hands of a receiver, ordering the sale of said road and all the property and assets attached thereto or belonging to said company, or in such other manner as the court may deem best for the interest of the State.

SEC. 7. *Be it enacted*, That at the end of five years after the completion of said road, said company shall set apart one *per centum per annum* upon the amount of the bonds issued to the company, and shall use the same in the purchase of bonds of the State of Tennessee, which bonds the company shall pay into the treasury of the State, after assigning them to the Governor, and for which the Governor shall give said company a receipt. . . .

SEC. 10. *Be it enacted*, That the provisions of this act shall extend to and embrace the Chattanooga, Harrison, Georgetown, and Charleston Railroad Company, the Nashville and North-western Railroad Company, the Louisville and Nashville Railroad Company, the South-western Railroad Company, the McMinnville and Manchester Railroad Company, the Memphis and Charleston Railroad Company, the Nashville and Southern Railroad Company, the Mobile and Ohio Railroad Company, the Nashville and Memphis Railroad Company, the Nashville and Cincinnati Railroad Company, the East Tennessee and Georgia Railroad Company, the Memphis, Clarksville, and Louisville Railroad Company, and the Winchester and Alabama Railroad Company, so far as the main trunk roads to be constructed by said companies lie within the limits of this State, and not otherwise, and said companies shall have all the powers and privileges and be subject to all the restrictions and liabilities contained in this act. . . .

SEC. 12. *Be it enacted*, That the State of Tennessee ex-

pressly reserves the right to enact by the legislature thereof hereafter all such laws as may be deemed necessary to protect the interest of the State, and to secure the State against any loss in consequence of the issuance of bonds under the provisions of this act. But in such a manner as not to impair the vested rights of the stockholders of the company.

SEC. 13. *Be it enacted*, That it shall be the duty of the Governor from time to time when there shall be reliable information given to him that any railroad company shall have fraudulently obtained the issuance of the bonds of the State, or shall have obtained any of said bonds contrary to the provisions of this act, he shall notify the Attorney-General of this State, whose duty it shall be forthwith to institute in the name of the State a suit in the circuit or chancery court of the county of the place of business of the company setting forth the facts. And when the facts shall satisfactorily appear to the court that any of said bonds shall have been fraudulently obtained, or obtained contrary to the true intent, meaning, and provisions of this act, then and in such case the court shall order, adjudge, and decree, that said road lying in the State, with all the property and assets of said company, or a sufficiency thereof, shall be sold, and the proceeds shall be paid into the treasury, and it shall be the duty of the comptroller immediately to vest the same in stock, creating a sinking fund as provided for in the seventh section of this act. And said company shall forfeit all rights and privileges under the provisions of this act. And the stockholders thereof shall be individually liable for the payment of the bonds so fraudulently obtained by said company, and for all other losses that may fall upon the State in consequence of the commission of any other fraud by said company, excepting such stockholders as may show to the said court that they were ignorant of or opposed to the perpetration of such frauds by the company.

(Passed Feb. 11, 1852.)

An Act to settle the amount of the public debt of the State, fix the rate of interest thereon, provide for the funding thereof, and the compensation of the officers of the State thereof.

Whereas, A large part of the bonded indebtedness of Tennessee is composed of interest which accumulated during the war between the States, when the people were unable and also forbidden to pay the same, and under such circumstances as relieved private trustees from the obligation to pay interest on trust funds; and

Whereas, This illegal war interest was under the forms of law funded into six per cent bonds at a time when a large majority of the citizens of the State were disfranchised and denied any voice in the administration of its government, and has since for many years borne interest upon interest, until now it constitutes about one-third of the entire debt; and

Whereas, Over seven-eighths of the indebtedness claimed against the State of Tennessee consists of bonds loaned by the State to railroad companies on the faith and credit of their property, composing what is known to the people of Tennessee as the railroad debt, and constituting an indebtedness, for the payment of which, the railroad companies were primarily liable and principal debtors; and

Whereas, A large part of the railroad debt arose out of the calamity of civil war, whereby the railroad companies were unable to accumulate profits, and the property was destroyed or appropriated to the uses of the belligerents; and

Whereas, Another large part of said railroad debt accrued to the State by reason of faithless management in recklessly loaning the bonds of the State without a compliance with the restrictions and limitations enacted for its protection at a time when a majority of the people of Tennessee were not permitted to have a voice in selecting their governing agents; and

Whereas, A large majority of the bonds loaned by the State to railroad companies were contrary to law, sold at less than half their nominal value for National currency at a time when its purchasing power was far below that of coin, and the burden of the State, by reason of such illegal sale of its bonds, and the depreciation of railroad property, consequent on the appreciation of currency, was greatly increased ; and

Whereas, No interest comparatively has been paid on the debt since the beginning of the war between the States, but the principal has been wrongfully and unlawfully increased, as herein stated, while the accrued interest has been compounded from time to time by funding the same, under various Acts, into bonds bearing interest at a rate double that paid by other States and nations in the money centres of the world for the use of capital ; and

Whereas, Owing to the constant accumulation of the debt and the indisposition of the people to submit to unjust exactions under the forms of law, the public credit has been impaired and speculators have thereby been enabled to buy up the bonds of the State at less than half their nominal value ; and

Whereas, For the foregoing reasons, the conviction is deeply rooted in the public conscience that the larger part of the debt is inequitable and unjust in its consideration if not illegal in its obligation, and the public creditors have for years conceded the right of the State to a reduction of their claims on account of its undoubted equities ; and

Whereas, By reason of the calamities of war resulting in the loss of half the material resources of the State, and to that extent diminishing the sources of revenue, and by reason of the imperative necessity growing out of the war for an increase of taxes for the support of public schools and other purposes, the people of Tennessee have and do entertain the convictions that it is their right and duty to insist upon a recognition of these equities in any settlement that may

be made of the public debt, and that they are justified by good morals and the example of other free States in looking beyond the letter of bonds and paying in their satisfaction such an amount as the demands of justice and good conscience or sound public policy may require; and

Whereas, By reason of the wide difference in the various propositions of settlement heretofore submitted by the public creditors, and the bitter and acrimonious controversies growing out of the discussion of the question resulting in injury to the State, it has become the duty of the people to put an end to controversy and unprofitable negotiation by finally fixing and tendering the amount they will pay; and

Whereas, A large majority of the people of Tennessee have given a distinct expression of their will on this subject, and declare that on grounds of public policy they will pay in full the bonds held by Mrs. James K. Polk, and all bonds held by educational, literary and charitable institutions in this State; that they will pay in discharge of their just obligation, what is known to them as the State debt proper, in full less war interest, and that in compromise of the remainder of the debt, known to them as the railroad debt, they will pay one-half of the principal and accrued interest by issuing therefor bonds of the State, bearing interest at the rate of three per cent per annum; now therefore,

SECTION 1. Be it enacted by the General Assembly of the State of Tennessee, That the bonds comprising the State debt proper of the State, is as follows:—

Capitol bonds	\$493,000
Hermitage bonds	35,000
Agricultural bonds	18,000
Union Bank bonds	125,000
Bank of Tennessee bonds	214,000
Bonds issued to turnpike companies	741,000
Hiawassee Railroad bonds	280,000
East Tennessee and Georgia Railroad bonds . . .	144,000
Memphis and LaGrange Railroad bonds	68,000

together with the unpaid coupons thereto attached, including the coupons maturing the first day of July, eighteen hundred and eighty-three, whether said bonds are in the form as first issued or funded under the Acts of eighteen hundred and sixty-six, eighteen hundred and sixty-eight and eighteen hundred and seventy-three: *Provided*, they can be traced to any one of the aforesaid State debt proper bonds when first issued, shall be funded into new coupon bonds upon the following basis: Such part of the State debt proper as now bears interest at the rate of six per cent per annum shall be funded by adding to the sum of the face of the existing bond the matured interest thereon, evidenced by the coupons thereto attached, including the coupons maturing the first day of July, eighteen hundred and eighty-three, and from the total sum of the face of the bonds and matured interest thereon, evidenced by the coupons attached, twenty-four per cent will be deducted, and the remainder funded in coupon bonds, bearing interest at the rate of six per cent per annum. Such part of the State debt proper as now bears interest at the rate of five and one-fourth per cent per annum, shall be funded by adding to the sum of the face of the existing bonds the matured interest thereon, including the coupons maturing the first day of July, eighteen hundred and eighty-three, evidenced by the coupons thereto attached, and from the total sum of the face of the bonds and the accrued interest, twenty-one per cent will be deducted, and the remainder funded in coupon bonds bearing interest at the rate of five and one-fourth per cent per annum. Such part of said State debt proper as now bears interest at the rate of five per cent per annum shall be funded by adding to the face of the existing bond and matured interest thereon, including the coupons maturing the first day of July, eighteen hundred and eighty-three, evidenced by the coupons thereto attached, and from the total sum of the face of the bond and the accrued interest, twenty per cent will be deducted, and the remainder funded into coupon bonds

bearing interest at the rate of five per cent per annum: *Provided, however,* That none of the bonds or parts of bonds heretofore issued under the previous funding acts for matured coupons, shall be funded under this section as State debt proper bonds, but the same shall be funded at fifty cents on the dollar and three per cent interest, in the manner prescribed in Section two of this Act: *And provided further,* That where any State debt proper bonds are past due, interest thereon shall be calculated from the date of maturing, at the rate the bonds bore before they were due, as if coupons were thereto attached: *And provided further,* that none of the bonds above enumerated shall be funded under this section as part of the State debt proper, if it shall be found on examination that they were bonds loaned to turnpike or railroad companies, and in no event shall the principal of the amount funded under this section exceed two million one hundred and eighteen thousand dollars: *Provided further,* if it shall appear that there is an excess in any class, and a deficiency in some other class in the amounts as above enumerated, then such excess shall be funded under this section to the extent of such deficiency.

SEC. 2. *Be it further enacted,* That the remainder of the public debt, evidenced by bonds outstanding, as follows: —

Ante-war railroad bonds	\$8,583,000
Post-war railroad bonds	2,638,000
Funded under the Act of 1866	2,246,000
Funded under the Act of 1868	569,000
Funded under the Act of 1873	4,867,000

together with the accrued interest thereon, evidenced by the matured coupons thereto attached, including the coupons maturing the first day of July, eighteen hundred and eighty-three, less the State debt proper bonds funded under the Acts of eighteen hundred and sixty-six, eighteen hundred and sixty-eight, and eighteen hundred and seventy-three, and funded under section one of this Act as a part of State debt proper, be funded with coupon bonds upon the following

basis: To the sum of the face of each existing bond will be added the matured interest thereon, including the coupons maturing the first day of July, eighteen hundred and eighty-three, evidenced by the coupons thereto attached and one-half of the total sum of each bond, and matured interest to be funded with coupon bonds, and said bonds to bear interest at the rate of three per cent per annum.

SEC. 3. *Be it further enacted,* That such part of the before recited public debt of the State as may have been funded under the Act of eighteen hundred and eighty-two, shall be funded under this Act upon the following basis: To the sum of the face of each of said bonds shall be added the coupons now matured thereto attached, including the coupons maturing the first day of July, eighteen hundred and eighty-three, and five-sixths of such total amount of each bond to be funded into coupon bonds, and said bonds to bear interest at the rate of three per cent per annum; except such State debt proper bonds as set out and designated in section one of this Act, and funded under the Act of eighteen hundred and eighty-two, which shall be funded by adding to the face of each of said bonds the matured coupons thereto attached, including the coupons maturing the first day of July, eighteen hundred and eighty-three, to which shall be added twenty-six and two-thirds per cent on bonds that bore six per cent when originally issued and funded into new coupon bonds bearing interest at the rate of six per cent per annum, and to such part of said State debt proper bonds as bore interest at the rate of five and one-fourth per cent when originally issued, shall be added thirty-one and two-thirds per cent, and they shall be funded into new coupon bonds bearing interest at the rate of five and one-fourth per cent per annum, and to such part of said State debt proper bonds as bore interest at the rate of five per cent when originally issued shall be added thirty-three and one-third per cent, and they shall be funded into such coupon bonds bearing interest at the rate of five per

cent per annum; *Provided however*, that bonds issued under the Act of eighteen hundred and eighty-two, for matured coupons, shall be funded as prescribed in the first proviso to the first section of this Act.

SEC. 4. *Be it further enacted*, That it shall not be lawful, under this Act, to allow any interest upon past due coupons attached to any class of bonds authorized to be funded under this Act.

SEC. 5. *Be it further enacted*, That all of the existing bonds of the State held by educational, literary, and charitable institutions of the State, on the first day of January, eighteen hundred and eighty-two, and the twenty-nine bonds held by the widow of James K. Polk are excepted out of the provisions of this Act.

SEC. 6. *Be it further enacted*, All of said bonds shall bear date the first day of July, eighteen hundred and eighty-three, be payable thirty years after the date thereof, be redeemable at the pleasure of the State after the expiration of five years, the interest payable at the office of the Treasurer of the State at Nashville, semi-annually, on the first day of January and July of each year, the first coupon to mature the first day of January, eighteen hundred and eighty-four, and said bonds shall be of the following denominations: Fifteen per cent and more, if the holders desire, one hundred dollar bonds, and the remainder one thousand dollar bonds.

SEC. 10. *Be it further enacted*, That no part of the public debt shall be funded, paid or received, except as provided in this Act, and all laws providing any other mode or manner of funding the debt be and the same are hereby repealed.

SEC. 12. *Be it further enacted*, That when there is a surplus in the Treasury not needed for the payment of the interest on bonds funded under this Act nor for the current expenses of the State, the Comptroller shall call for the redemption of bonds bearing the highest rate of interest,

which shall be taken up and paid off to the extent of the surplus.

SEC. 13. *Be it further enacted*, That when a bond is called for redemption by number the interest shall cease on said bond at the expiration of sixty days after the call, and if the bonds are not all funded under the provisions of this Act, the Comptroller, after calling in and paying all the bonds funded under this Act, paying those bearing the highest rate of interest first, shall apply the surplus in the Treasury to the purchase of the unfunded bonds; *Provided*, that he shall not give a higher price for any bonds not funded than the amount to which they are entitled to be funded under this Act. He shall advertise for the bids at such times as he may designate, and take the lowest bid, provided it is not at a greater rate or amount than the holder of said bond would have received, provided it had been funded under this Act.

SEC. 14. *Be it further enacted*, That all laws and parts of laws in conflict with the provisions of this Act be and the same are hereby repealed.

(Approved March 20, 1883.)

APPENDIX VI.

EXTRACTS FROM THE "REPORT OF THE JOINT INVESTIGATING COMMITTEE ON PUBLIC FRAUDS AND ELECTION OF HON. J. J. PATTERSON TO THE UNITED STATES SENATE, MADE TO THE GENERAL ASSEMBLY OF SOUTH CAROLINA AT THE REGULAR SESSION, 1877-78."

Supplies.

"THE committee respectfully invite attention to the evidence and vouchers submitted with this report under the head of 'Supplies.' The abuses have been so great and of such a palpable nature that the most credulous person

would hardly believe that such frauds could be perpetrated under the forms of legislation. History fails to cite an instance which can be compared with such a carnival of fraud and extravagance as has been held in South Carolina by and through the purchase of supplies for the members of the General Assembly."

"If the simple statement were made that senators and members of the House were furnished with everything they desired, from swaddling-clothes and cradle to the coffin of the undertaker, from brogans to chignons, finest extracts to best wines and liquors, and all *paid for by the State*, it would create a smile of doubt and derision; but when we make the statement, and prove it by several witnesses and the vouchers found in the offices of the clerks of the Senate and House, all will with sorrow admit the truthfulness of this report."

"For your guidance we deem it essential to place under appropriate heads the class of supplies and the evidence referring thereto."

Refreshments.

"Under the class of refreshments we ask attention to these facts: A room in the State House was fitted up wherein to serve 'wines, liquors, eatables, and cigars to State officials, senators, members of the House and their friends, at all hours of the day and night.'"

"Not satisfied with the establishment of a bar in the Capitol, they employed a porter who had charge of the 'refreshment' room. The porter states that for six years the State House bar-room was generally opened at eight o'clock in the morning and kept open until from two to four the next morning; that during that time some one was constantly there eating, smoking, or drinking, and that Sunday formed no exception to the rule."

"In addition to the refreshments furnished at the State House, large quantities of wines, liquors, and cigars, and

other things, were sent to the hotels, boarding-houses, and residences of State officials, senators, members and their friends."

"It will be observed that the State furnished a room, a porter, and refreshments for our 'statesmen,' while they were plotting how to rob the people they pretended to represent; ready to vote for any measure that would enrich themselves at the public expense."

Among the articles purchased under the head of supplies and furnished free of charge to the legislators were such wines and liquors as Heidsick champagne, sparkling Moselle, imperial pale sherry, best Madeira, port and Malaga wines, finest French cognac brandy, Baker, Bourbon, and nectar whiskies, Jamaica rum, etc.; the best grades of cigars and tobacco; and groceries and delicacies of all kinds.

Furniture.

"We find that there has been paid out within four years for furniture alone over two hundred thousand dollars; and of this amount Mr. Berry and Mr. Fagan, furniture dealers, testify that at the present time there is at the State House only seventeen thousand, seven hundred and fifteen dollars worth, appraised at the prices charged for it, a list of which was sworn to by them and is attached to their evidence. . . . Mr. Berry remembers furnishing the rooms occupied by W. J. Whipper and others, and some of the rooms he furnished as often as three times; he traded furniture to members for pay certificates, and furnished almost all the offices in the State House *every session!* In continuation he states that he furnished at least forty bedrooms, but does not know who occupied them all or what became of the furniture."

"It is no longer a matter of surprise to your committee that members who only receive six dollars per diem could in a few weeks after their arrival in Columbia obtain elegant furniture for their rooms, Brussels carpets for the

floors, and recline on Oriental springs and sponge mattresses, while their constituents were being hounded down by the inexorable tax-gatherer to pay the price of these luxuries."

Jewelry, etc.

"We cannot refrain from commenting upon the large accounts of Mr. Isaac Sulzbacher, a well-known jeweler of Columbia, and call especial attention to accounts designated as Nos. 27 and B 5."

Among the articles mentioned in the various accounts presented in the report are gold watches and chains, rich sets gold jewelry, diamond rings and pins, gold lockets, charms, finger rings, necklaces, pencil cases, pens, breast pins, ivory handled knives and forks, pen and pocket knives, teaspoons, tablespoons, forks, call bells, rich toilet sets, pocket pistols, cuckoo clocks, extra fine Belgian marble mantel clocks, French China vases, ladies' fine work boxes, etc.

Lists equally long are furnished in the report under the head of crockery and glassware, printed matter, stock (fine horses, mules, carriages, buggies, harness, etc.), and sundries.

The remainder of the report describes various frauds committed under the head of "Public Printing," "Pay Certificates," "Hardy Solomon's Claim," "The Swindle of the Greenville and Columbia Railroad Company," "The Impeachment Swindle," "Blue Ridge Railroad Scrip, Validating Act, and Financial Settlement," "Ku Klux Rewards," etc., "Penitentiary and Orphan Asylum Frauds," "Sinking Fund Frauds," etc., and "Election of Hon. John J. Patterson to the United States Senate."

The whole report covers nine hundred and thirty-seven large octavo pages.

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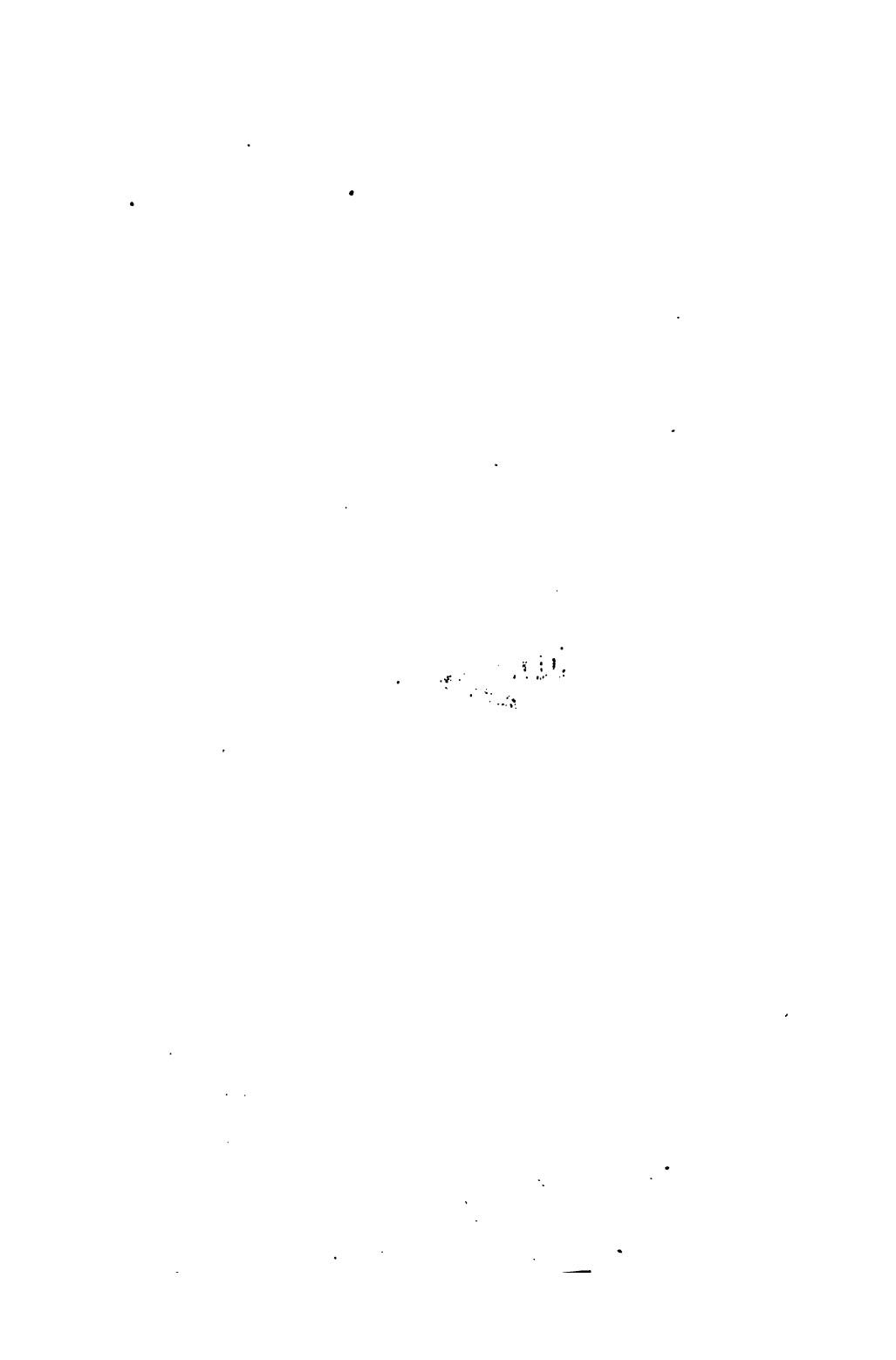
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